

WorkCoverSA

Claims Operational Guidelines
Chapter 4: Make a claim for
compensation AND payments
under provisional liability
pending determination of a claim
for compensation

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Contents

Chapter 4: Make a claim for compensation AND payments under provisional liability pending determination of a claim for compensation.....	4
An overview of the process	6
Reporting a work-related injury	7
Give notice of an injury – section 51	7
Make a claim for compensation – section 52	9
Different ways to lodge a claim for compensation	9
Time limit to lodge the claim.....	9
Defect in the notice of an injury.....	9
Late lodgement of claim	9
<i>Claim form</i>	10
Information required for making a claim.....	10
<i>WorkCover Medical Certificate (WMC)</i>	10
<i>Employer Report Form (ERF)</i>	11
Action following receipt of the claim	12
Decision whether to make a determination or consider provisional weekly payments.....	12
Calculating AWE for claim for compensation.....	12
Provisional weekly payments	12
Initial notification of injury – definition.....	13
Initial notification is the first notification of an injury	14
Mandatory information required for initial notification	14
Mandatory information for initial notification is incomplete.....	15
Calculating AWE for provisional weekly payments	15
Set-offs and rights of recovery including AWE adjustments	16
Notice of commencement of provisional weekly payments	16
Reasonable excuse to not commence provisional payments.....	18
Advice to the worker if a reasonable excuse is used	18
Discontinuing payment under provisional liability	20
Provisional liability for medical expenses – section 32A of the Act	21
Decisions made with respect to provisional weekly payments or medical and other expenses are not reviewable	22

Waiver of employer excess for the first two weeks of incapacity23

 Dispute process if claims agent decision is not to waive the employer’s excess23

Employers exempted by regulation from requirement to register and pay the first two weeks of income
maintenance on a claim for compensation24

Claims must identify the correct employer location registration25

Claims where there is no active location registration25

Chapter 4: Make a claim for compensation AND payments under provisional liability pending determination of a claim for compensation

This chapter deals with:

1. giving a notice of an injury under section 51
2. making a claim for compensation under section 52 (requires a determination under section 53)
3. payments under provisional liability
 - a) provisional weekly payments under Part 4, Division 7A
 - b) provisional medical and other expenses under section 32A.

NOTE:

The claims agent's first priority is to commence making payments of income maintenance to the injured worker. The aim is to enable a worker who has a work-related injury to continue receiving an income so there is minimal disruption to the worker's financial situation, family and/or lifestyle. If this can be achieved by determining the claim within seven (7) days, then that is the priority. But if that is not possible, the claims agent's priority is to make making provisional payments to the worker within seven (7) days or within the next scheduled pay period.

A notice of an injury and a claim for compensation can be combined by using one *Claim form*. When using the *Claim form*, the worker should indicate by ticking the appropriate box whether they wish to 'give notice of an injury only' (and not claim any weekly payments and/or medical and other expenses) or 'give notice of an injury and claim weekly payments and/or medical and other expenses'. The *Claim form* also serves as an application for payment of provisional medical and other expenses under section 32A.

The claim and determination process can be briefly described as:

- A worker submits a claim when a worker has an injury, which results in time off work and/or medical or other expenses being incurred.
- As soon as the claims agent receives that claim, consideration must be given to commencing weekly payments and the determination process must begin.
- If this determination process takes, or is likely to take, longer than seven (7) calendar days, weekly payments under provisional liability may be payable to the worker (conditions apply).
- Once a determination has been made, the weekly payments under provisional liability cease and are continued by weekly compensation payments under section 35 if the claim is accepted.

(For detailed information on the claim and determination process please read this chapter and chapter 5.)

For clarification:

- 1) The *Provisional Payment Guidelines* (1.4) require **minimum information** to be provided (referred to as 'mandatory information' in these operational guidelines).
- 2) The *Workers Rehabilitation and Compensation Act 1986* (the Act) specifies **certain information** that is needed for a notice of an injury (referred to as 'mandatory information' in these operational guidelines).

However, for both the notice of an injury and the claim for compensation, the Act requires a *Claim form* to be provided, which should in most cases contain the information needed for making a determination (see sections 51(5) and 52(1)(a)).

Please note that the following forms are **mandatory**:

- (a) *Claim form*
- (b) *WorkCover Medical Certificate*
- (c) *Employer Report Form*

(For exceptions and more detail, please refer to section 52(6a) of the Act and 1.4 of the *Provisional Payment Guidelines*.)

An overview of the process

The following is a guide to the claims process:

Worker actions	Employer actions	Claims agent actions
<ol style="list-style-type: none"> 1. Inform the employer of the injury as soon as possible ie, provide initial notification of the injury (give notice of an injury). 2. Seek compensation either by: <ol style="list-style-type: none"> a. completing a <i>Claim form</i> and giving it to the employer. If not in employment, sending the <i>Claim form</i> to the claims agent b. contacting the claims agent to make the claim over the telephone followed by a <i>Claim form</i>. 3. Provide a copy of the <i>WorkCover Medical Certificate (WMC)</i> if the worker has been unable to work because of the injury. The treating doctor completes this. For exceptions refer to section 52(6a) of the Act and 1.4 of the <i>Provisional Payment Guidelines</i>. 4. Give a copy of the WMC to the employer and the claims agent 	<ol style="list-style-type: none"> 1. Complete an <i>Employer Report Form (ERF)</i>. This is done when a claim under section 52 is received (ie, worker makes a claim for compensation). 2. Send all the forms (including the WMC) to the claims agent. <p>Time limit to do this is five business days from receipt of the claim for compensation. Penalties apply if this timeframe is not met.</p> <p>Refer to section 52(5) of the Act.</p> <p>An employer's liability to pay the first two (2) weeks of income maintenance may be waived if the employer complies with this requirement within five (5) calendar days of having received the claim.</p>	<p>Make a decision as to whether the claim is:</p> <ul style="list-style-type: none"> • accepted • rejected or • unable to be determined (ie, further information is required before a determination can be made). <p>At the same time, if a determination to accept or reject the claim cannot be made within seven (7) days, ensure that the worker receives provisional weekly payments if all criteria have been met and there is no reasonable excuse.</p> <p>Document every step of the decision-making process – in particular if verbal communication has taken place – and back it up with evidence.</p> <p>Refer to section 53 and Division 7A of the Act.</p> <p>Time limit to determine a claim is 10 business days from receipt of the claim. If further information is needed the decision must be made as soon as reasonably practicable. During the determination process, both the worker and employer have to be notified of any decisions and/or delays.</p>
<p>Refer to sections 51 and 52 of the Act. Time limit to make a claim is six months.</p>		

Reporting a work-related injury

The reporting of a work-related injury is often the first step in the claim process; so the notice of an injury may be a precursor to making a claim. When it is a precursor to a claim, the notice can be provided orally (eg, over the phone) or in writing. If the notice of an injury is made over the phone and the claim for compensation is made later, a *Claim form* will need to be presented. This *Claim form* should provide the claims agent with the minimal information that is required under the *Provisional Payment Guidelines* and allow a worker to receive weekly payments under provisional liability if the claim cannot be determined within seven (7) days. The minimal information is identified on the *Claim form* as shaded boxes.

For example, in some cases, a worker may initially give notice of an injury only and not request weekly payments or medical and other expenses. At a later date, the worker may need to claim compensation because they have since incurred loss of wages and/or medical expenses as a result of that same injury. At this stage, the worker or their representative will need to lodge the claim via a *Claim form* with the claims agent.

However, there may be instances, where it is not practicable for the worker to immediately complete a new *Claim form*. In those cases, the claims agent must confirm with the worker that all the information is still current and remind the worker of their obligation to notify their employer. The claims agent must confirm the claim details in writing and request new documentation from the worker (including a new *Claim form*). The claims agent must record the date of receipt of the claim on Cúram.

Give notice of an injury – section 51

All incidents which cause an injury or death occurring at work, or because of work, must be reported if practicable within 24 hours, or as soon as practicable after the occurrence of the injury or death, to the employer. If the worker is not in employment or is self-employed at the time, notice may be given to the claims agent. (Refer to sections 51(1) and (2) of the Act.)

Notice to the employer or other relevant person can be given verbally or in writing, in person or by post. The relevant person could include the employer's rehabilitation and return to work coordinator, contact person designated by the employer or the worker's supervisor at the time of the injury.

If notice of an injury is given verbally, the person giving the notice may be asked for a written statement using the *Claim form*. (Refer to sections 51(5) of the Act) The employer must send a copy of the notice of an injury to the claims agent within five business days of receiving it from the worker. (Refer to section 51(6) of the Act.) The exceptions to this are those notices that relate to 'minor injuries'. A minor injury is classified as an injury that:

- does not require, or is unlikely to require, treatment by a 'medical expert' as defined in the Act and
- is not of a recurrent nature and inflicts only a temporary injury upon a worker and
- does not cause the worker to lose any working time during the 'working day' (as defined in the Act) on which the injury occurs, other than the time required to treat the injury.

However, if the injury does, or is likely to lead, to a claim for medical expenses, the injury must be reported in accordance with section 51 of the Act.

Once a worker has lodged a claim for compensation under section 52, the determination process under section 53 must begin. If the determination process takes, or is likely to take, longer than seven (7) calendar

days provisional weekly payments to the worker must commence (conditions apply), and possibly provisional medical and other expenses under section 32A, whilst the determination process continues.

There must not be undue delay in making a determination as the worker may apply to the Tribunal for an expedited determination of their claim.

Make a claim for compensation – section 52

When a claim has been lodged, the claims agent's first priority is to start making payments to the injured worker as quickly as possible. The aim is to make sure injured workers can continue receiving income so there is minimal disruption to the worker's financial situation, family and/or lifestyle – be it payment under provisional liability or by a determination under section 53.

Different ways to lodge a claim for compensation

A claim for compensation can be lodged when the worker has a work-related injury which results in medical expenses and/or time off work. It can be submitted in one of the following ways:

- By completing the paper version of the *Claim form*
- By phoning the claim agent (or WorkCoverSA on 13 18 55 if there are difficulties) and subsequently completing the *Claim form*
- On-line on the claims agent's website.

(Refer section 52(1)(a) of the Act)

Time limit to lodge the claim

The claim must be lodged within the prescribed period. This is defined as “the period of six months commencing on the day on which the entitlement to make the claim arises”.

For example, if a worker is injured on 1 May 2008 the time limit to lodge the claim would be six months from 1 May 2008.

Defect in the notice of an injury

The absence of, or a defect in, a notice of an injury required by section 51 of the Act is not a bar to making a claim if:

- the proper determination of the claim has not been substantially prejudiced or
- the failure to give notice, or the defect in the notice, was because of ignorance or a mistake by the worker, absence from the State by the worker, or any other reasonable cause.

(Refer to section 52(3)(a) of the Act.)

Late lodgement of claim

A claim lodged after the prescribed period (ie, six months) may be rejected, unless the following can be shown:

- the proper determination of the claim has not been substantially prejudiced or
- the worker failed to make the claim within the prescribed period because of ignorance or mistake, or because they were absent from the State or any other reasonable excuse.

(Refer to section 52(3)(b) of the Act.)

The claims agent will need to consider the following issues when deciding whether the proper determination of the claim has been substantially prejudiced:

- Has the worker's ability to demonstrate the compensable injury been detrimentally affected because of the late reporting?

- Could witnesses, including fellow employees (both current and former), have provided independent evidence on important issues to be determined?

If yes to either, has that substantially prejudiced the claims agent's ability to properly determine the claim?

Claim form

Following notice of an injury, a *Claim form* must be submitted to the employer where the worker is in employment at the commencement of incapacity or otherwise to the claims agent (refer to section 52(4) of the Act). It must be supported by a *WorkCover Medical Certificate (WMC)* (for exceptions refer to section 52(6a) of the Act).

Information required for making a claim

The Act only stipulates that the worker provide certain information in order to satisfy the notice of an injury requirements (refer section 51(3)(b)), but as a matter of policy and for the purpose of enabling the claims agent to determine the claim, it is prudent for the claims agent to obtain at least the same details as the minimum information required for provisional weekly payments if not already provided by the worker (see 1.4 of the *Provisional Payment Guidelines*).

WorkCover Medical Certificate (WMC)

A *WorkCover Medical Certificate* is a certificate in the designated form. The WMC must be completed by the treating medical practitioner and included with the *Claim form* when any compensation is being claimed.

The WMC must include information on:

- the nature of the injury
- the probable cause of the injury
- the extent and probable duration of incapacity for work, if relevant
- whether the medical expert has personal knowledge of the workplace and, if so, the extent of that knowledge
- whether the medical expert has discussed with the employer the kinds of work that might be appropriate for the worker in view of the injury.

(Refer to section 52(1)(c).)

Note:

The claims agent may in certain circumstances dispense with the requirement for a WMC (refer to section 52(6a)) and determine the claim so any undue delay is avoided.

The claims agent should apply appropriate discretion and only waive this requirement when all reasonable efforts to obtain the medical certificate have been made.

An example of 'appropriate discretion' is where the worker has returned to work and there is other information available that confirms that the worker was injured and sought medical treatment (eg, phone call to/from the treating general practitioner confirming that the worker sought medical treatment for the work-related injury).

A further example which would justify waiving the requirement to produce a WMC is, where a worker sustains an injury at work, visits a physiotherapist for treatment without seeing a medical practitioner and - needing no further treatment - submits the account for payment together with the *Claim form*, the claims agent may dispense with the requirement for a WMC. The claims agent will need to verify all

claim details to ensure that the injury was work-related, the worker has returned to work and the injury is unlikely to lead to a long-term injury or further medical treatment.

Employer Report Form (ERF)

The ERF is a designated form, which the employer must complete and forward to the claims agent – along with the claim (eg, the *Claim form*) – within five business days of receipt of the claim. Failure to do this may result in a prosecution. Maximum penalty for late lodgement is \$1000 (refer to section 52(5) of the Act).

An employer who forwards the ERF and the claim to the claims agent within five calendar days of receipt of the claim instead of the above five business days required by section 52(5), is entitled to a waiver of their liability to pay the first two (2) weeks of income maintenance (refer to section 46(8b) of the Act and the section below titled Waiver of employer excess for the first two weeks of incapacity).

The following is important information that can be obtained from a completed ERF:

- the employer details (employer name, registration number) and the employer location details (location name, number and address) where the worker employed at the time of injury. For employer's with multiple locations this information assists the claims agent identify the correct location
- the person to contact regarding the claim and their position
- the input tax credits percentage (ITC%) the employer is claiming or entitled to claim on their WorkCover premium paid at that time. This provides up-to-date information on the % of GST claimed by employers on their premium. (Note: Most employers claim 100% of GST payable on their premium and their ITC% is 100%. For employers whose ITC% is less than 100%, WorkCover may be able to claim a decreasing adjustment on the claim costs paid. If an employer is not registered for GST their ITC% is 0%.)
- place where injury occurred and if the place the injury occurred was not at the registered location, the address of the premises/site of the organisation where the injury occurred. This information can be an alert for potential claim costs recovery
- other details which allows the employer to provide further information to assist the claims agent determine the claim which allows for the employer
- first two weeks information, if an employer has made any weekly payments to the worker during the current calendar year – this information is required because an employer's liability is limited to two weeks of a worker's weekly payments in a calendar year.
- details to assist in calculation of a worker's average weekly earnings (AWE)
- employer's EFT details, if the employer is to pay the worker's weekly payments and claim reimbursement
- Employer's signed declaration

However, the claim determination process will not be deferred because of a delay with the ERF or because the employer no longer exists. Reasons for the delay or lack of the ERF are to be reported and documented in Cúram.

Action following receipt of the claim

In order to ensure an efficient claim determination process and management of the worker's claim and return to work, the claims agent must make early contact with the worker, employer/rehabilitation and return to work coordinator and treating doctor (if appropriate):

- to gather information eg, the worker's average weekly earnings (refer to chapter 8 for calculation of AWE) or information to commence weekly payments either by determining the claim for compensation or commencing provisional weekly payments (see below for more detailed information on provisional weekly payments),
- to obtain any missing information or documentation such as the *Claim form*, *WMC* or *ERF*
- to consider whether workplace rehabilitation should commence (refer sections 28A and 26(4) of the Act)
- if the decision is to commence provisional weekly payments, ascertain whether the employer is able to make provisional weekly payments to the worker within the required time frame (ie, within the next scheduled pay period) and advise the employer on how to seek reimbursement where this applies.

Decision whether to make a determination or consider provisional weekly payments

If weekly payments of compensation cannot be made as the claim cannot be determined within seven (7) calendar days and a reasonable excuse does not apply, the claims agent must commence provisional weekly payments. Even when the worker is in receipt of provisional weekly payments, it is important that the claims agent continues to obtain the necessary information to determine the claim as early as possible. (For the determination process refer to Chapter 5 – Determine the claim.)

The determination of a claim for weekly payments must include the determination of AWE so if the information to calculate the AWE has not been received by the claims agent when the claim could otherwise be determined, the claims agent must commence provisional weekly payments and set the AWE in consultation with the worker and employer. (For further information refer to section 'Calculating AWE for provisional weekly payments' below.)

Calculating AWE for claim for compensation

For information on calculating average weekly earnings refer to chapter 8 – Average weekly earnings for claims made on or after 1 July 2008.

Provisional weekly payments

Where the claims agent considers it appropriate to make provisional weekly payments, the following guidelines regarding provisional liability apply:

The *Provisional Payment Guidelines* supplement the Act and stipulate the process and criteria for provisional weekly payments. These guidelines are specific to Part 4, Division 7A of the Act. They apply to:

- injuries sustained before, on or after 1 January 2009 - unless a worker has made a claim for the same injury under section 52 of the Act before 1 January 2009

and

- injuries sustained at any time with respect to a claim for provisional medical expenses.

Payments under provisional liability can be paid for 13 weeks after the date of the commencement of incapacity or until the claims agent has determined the claim for compensation or the payments are otherwise discontinued under the *Provisional Payment Guidelines*.

If the determination takes longer than 13 weeks, this period may be extended (refer to section 50G(2) of the Act). The claims determination or management process must not be delayed while the worker is in receipt of provisional weekly payments.

Provisional weekly payments will generally commence from the first date of incapacity for work and loss of wages.

The counting of the seven (7) days, within which provisional weekly payments must commence, starts when all mandatory information required to constitute an initial notification has been submitted. Therefore, if the *Claim form* is provided to the claims agent and the employer and some of the mandatory information is missing, day zero (0) — for the purpose of counting seven days — only starts once all of the mandatory information has been received.

The claims agent has complied with the requirement to commence payments within seven (7) calendar days if they have authorised commencement of weekly payments in writing to the worker within that period and payment is made in accordance with the next scheduled pay period (refer to clause 2 of the *Provisional Payment Guidelines*).

Note:

- Section 50C(2) of the Act states that the acceptance of liability on a provisional basis does not constitute an admission of liability by WorkCover under the Act or independently of the Act.
- Where provisional payments have been approved and an employer is not able to make the provisional weekly payments to the worker within the required time frame, the claims agent must make the payments directly to the worker at the next scheduled pay period – as outlined in clause 2 of the *Provisional Payment Guidelines*. If the claims agent has paid the first two (2) weeks of payments and the waiver does not apply (because the employer has not complied with the early reporting requirements), the claims agent is entitled to recover that amount from the employer (refer to section 48(2) of the Act).

If the claims agent will be making the payments directly to the worker, the claims agent may need to contact the worker and obtain additional details (eg, the worker's bank details). The claims agent should also inform the worker that they need to provide the claims agent with a completed *Tax file number (TFN) declaration form* within 14 days and that the tax-free threshold can only be claimed against one payer (Australian Taxation Office (ATO) requirement -see Taxation on direct weekly payments in Chapter 9 – Payment entitlements).

Initial notification of injury – definition

Section 50A of the Act defines 'initial notification' as:

*'the notification of an injury that is given to an employer (if the worker is in employment) and the Corporation, in the **manner and form required by the Provisional Payment Guidelines**, by the worker or by a person acting on behalf of the worker (for example, by an employer or a medical expert)'*

Initial notification is the first notification of an injury

The *Provisional Payment Guidelines* also defines 'initial notification' as the first notification of an injury that is given. This means that lodging a completed claim form will only constitute an initial notification if it gives notice of an injury for the first time.

Refer to clauses 1.1 and 1.2 of the guidelines.

The claims agent will need to assess whether the information received in a claim form (or other manner) is in fact an initial notification (ie, the first notification of the injury) or whether the worker's claim is for compensation for a new period of incapacity (eg, new period off work due to a previously accepted injury).

If the claims agent determines the information received is in fact a claim for compensation for a new period of incapacity and not an initial notification of the injury, and the claims agent cannot determine the claim at this point, the claims agent should (if possible) within five days of receiving the claim contact the worker to:

- request any missing information from the worker and
- advise the worker that:
 - provisional weekly payments will not be paid to them as provisional payments are only payable for a claim that is an initial notification of their injury (as defined in section 50A of the Act and the *Provisional Payment Guidelines*) and not for claims for compensation for a new period of incapacity for previously accepted claims
 - their claim will be determined as soon as all the required information has been received.

This advice to the worker should also be in writing. It is important that the claims agent continues in their effort to determine the claim as early as possible. (For the determination process refer to Chapter 5 – Determine the claim.)

Mandatory information required for initial notification

The mandatory initial notification requirements on the *Claim form* will be met when the worker, employer or other representative of the worker has provided the minimum information to the claims agent (as outlined in clause 1.4 of the *Provisional Payment Guidelines*).

Worker's information:

- name
- postal address and/or telephone number
- date of birth
- gender
- job role or occupation

Employer's information:

- business name
- business address

Treating doctor information

- in the manner and form of a designated medical certificate (or, if not available, other credible evidence that the worker obtained medical treatment for the injury but such a form of notification is subject to the operation of paragraph 3.1.2 of the *Provisional Payment Guidelines*); and
- if the worker is hospitalised, the name of the hospital.

Note:

Under paragraph 3.1.2 of the *Provisional Payment Guidelines*, the worker's provisional weekly payments can be discontinued if the 'designated medical certificate' is not provided within 10 calendar days of their initial notification of their injury.

Injury and accident details:

- description of the injury (injury/disease suffered and part of body affected)
- date and time of the workplace injury or the period of time over which the injury emerged from date of first symptoms
- description of how the workplace injury happened
- date the employer was notified of the injury and name of person notified
- whether the worker had any time lost as a result of the injury and is seeking weekly payments of compensation and/or medical expenses

Notifier information:

- name of person making the initial notification
- contact details, telephone number and/or address (if not the worker)

Mandatory information for initial notification is incomplete

If information is missing, the claims agent should inform the worker (verbally or in writing) – whether or not it was the worker who gave the notification – that the notification is incomplete. The worker, or their representative, may then provide the missing information to complete the initial notification

Note:

It is possible for provisional weekly payments to commence even though the *Claim form* has not yet been submitted, as long as all mandatory information has been supplied by telephone. The worker must be informed that the *Claim form* must be provided within 10 calendar days of the initial notification or the worker's payments may be discontinued (refer to clauses 3.1.1 of the *Provisional Payment Guidelines*).

Calculating AWE for provisional weekly payments

When a claim cannot be determined within the time frame and provisional weekly payments under Division 7A need to commence, the claims agent must endeavour to calculate the AWE according to section 4 of the Act. (For information on calculating AWE refer to chapter 8 – Average weekly earnings for claims made on or after 1 July 2008). However, if the information is not available to calculate the AWE before commencing provisional weekly payments, the claims agent should set the AWE in consultation with the worker and employer.

When setting the AWE, the claims agent 'is expected to act in a fair and even-handed way that takes into account the rights, entitlements and interests of the worker'. (Refer to Full Court decision *Durak v WorkCover/Employers Mutual Ltd (Imagetec Solutions Australia Pty Ltd) [2010] SAWCT 56 (9 November 2010)*)

The claims agent must continue to obtain information to establish the correct rate and adjust the rate paid if required.

Set-offs and rights of recovery including AWE adjustments

If the claims agent has set the worker's AWE at a higher amount than the worker's correct rate, the claims agent must not recover or offset the overpayment from the worker. However, if the claims agent has set the AWE at a lower rate than the worker's correct rate, the worker is entitled to be back-paid to make up for the difference.

If, after the claims agent and/or the employer makes weekly provisional weekly payments, it is determined that the worker was not entitled to compensation under the Act, the employer or the claims agent may recover the amounts paid from the worker as a debt but only if the worker acted dishonestly in making an application or providing information for the purposes of Division 7A or any other provisions of the Act. Refer to section 50H of the Act.

The right of recovery under section 50H(2) of the Act is subject to and in accordance with the Regulations¹

Costs incurred under provisional liability (except for the first two weeks of incapacity where the waiver of the employer excess does not apply and the employer has paid the worker) will be a cost to the Scheme and will impact on the registered employer's premium, unless the claim relates to a secondary or unrepresentative injury.

Notice of commencement of provisional weekly payments

In accordance with section 50E of the Act and paragraph 2.3 of the *Provisional Payment Guidelines*, the claims agent must give notice of commencement of provisional weekly payments to the worker in writing (as soon as practicable after weekly payments of compensation commence). The claims agent needs to provide a similar notice to the employer.

The written notice must include:

- notification that weekly payments have commenced on a provisional basis
- a statement in the designated form about the operation of the Act in relation to the payments and the making of a claim (see below for example statement – What you need to know about these payments and making a claim for compensation).
- the period for which weekly payments will be paid
- the AWE rate (to be determined in accordance with section 4 of the Act)
- who will pay the worker (claims agent or employer)
- information to the effect that the worker can expect payment in the next scheduled pay period and if this does not happen to contact their case manager immediately to ensure that payment can be arranged.

If the employer makes the weekly payments directly to the worker the letter to the employer must also include the requirement to pay the worker 'in the next pay cycle'.

NOTE: If weekly payments are delayed and the worker does not receive their weekly payment in the next scheduled pay period, WorkCover may be liable to pay the worker interest (refer section 47 of the Act).

¹ Refer to Regulation 36, 'Recovery of certain amounts paid to workers', *Workers Rehabilitation and Compensation Regulations 2010*

The following statement has been designated for the purposes of section 50E(b) of the Act, and will be used as an attachment to the letter advising the worker of the decision to pay provisional weekly payments:

What you need to know about these payments

You are receiving provisional weekly payments of compensation paid on the basis of provisional acceptance of liability whilst we are determining your claim under section 53 of the Act. Please note that these payments do not constitute an admission of liability under the Act.

Payment of provisional weekly payments will commence in accordance with the next scheduled pay period. Payments can only be paid to you for a maximum period of 13 weeks whilst your claim is being determined.

After provisional weekly payments have commenced for a period, they can be discontinued on the basis of any grounds contained in the *Provisional Payment Guidelines*, which are as follows:

- If you gave a telephoned initial notification of your injury, you do not provide a completed claim form within 10 calendar days of that initial notification;
- If you did not provide a designated medical certificate with your initial notification, you do not provide such a certificate within 10 calendar days of that initial notification;
- There is new credible and substantiated evidence (e.g., you are not a worker as defined in the Act) that leads to the conclusion that the injury is not compensable;
- You consent;
- Your case manager cannot contact you for over a week despite making reasonable attempts;
- Your case manager receives a certificate from a doctor which certifies that you have recovered and that you have ceased to be incapacitated for work;
- You return to work and are earning wages equal to or in excess of the rate of your provisional weekly payments;
- You are dismissed from employment for serious and wilful misconduct;
- You have breached the obligation of mutuality; or
- You fail to provide a *WorkCover Medical Certificate* for a period for which you have claimed weekly compensation.

Your claim under section 52 will still be determined even if you are receiving or have received provisional weekly payments. Once your claim is determined provisional weekly payments will cease and you will not receive additional weekly payments for the same period for which you have already received provisional weekly payments. Whether you continue to receive weekly payments will depend after that time on whether your claim has been accepted.

Please refer to the attached copy of section 52 of the Act.

For further information, refer to the attached copy of Division 7A and the *Provisional Payment Guidelines* which can be found on www.workcover.com

Reasonable excuse to not commence provisional payments

Section 50B(1) of the Act states that weekly payments of compensation are to commence within seven (7) days after initial notification is received, unless the claims agent determines that there is a reasonable excuse for not commencing those payments. Under section 50B(1) of the Act and as outlined in clause 2.1 of the *Provisional Payment Guidelines*, a reasonable excuse will occur in the following circumstances:

- **A claim for compensation has already been determined**

If a claims agent has already received and made a determination under section 53 with respect to a claim for compensation for the same injury.

- **The injured person is unlikely to be a worker under the Act**

The claims agent considers, on a reasonable basis (which must be evidence-based), that the injured person is unlikely to be a 'worker' under the Act.

- **The injury is not work-related**

The claims agent considers on a reasonable basis (which must be evidence-based) that it is likely that the worker did not sustain an injury or that the injury did not arise from employment within the meaning of section 30(1) of the Act or that it does not meet the criteria of section 30A of the Act.

- **The injury is notified after 13 weeks of incapacity**

The notice of injury is not given within 13 weeks after the date of the commencement of incapacity. However, the claims agent may not rely upon this excuse if a liability is likely to exist and if it believes paying weekly compensation to the worker under provisional liability will be an effective injury management strategy for the worker to return to work.

Advice to the worker if a reasonable excuse is used

If the claims agent has a reasonable excuse for not commencing provisional weekly payments under section 50D of the Act and the *Provisional Payment Guidelines*, they must give notice in writing to the worker within seven (7) calendar days which must include the following:

- details of the reasonable excuse, including the reason the reasonable excuse applies (for example, if the reasonable excuse is that the worker is unlikely to be a worker under the Act, then state why it is considered unlikely they are a worker under the Act). Include copies of information, documents and medical reports that are relevant and were considered in making the decision
- advising that the worker may contact the claims agent particularly if the worker has any further information to support their claim
- a statement in the designated form about their rights generally under the Act, including how to make a claim for compensation and advice on contacting the WorkCover Ombudsman (refer below).

The following statement has been designated for the purposes of section 50D(b) of the Act, and will be used as an attachment to the letter advising the worker of the decision not to commence provisional weekly payments:

What you need to know about your rights under the Act.

A decision has been made not to commence provisional weekly payments under the *Provisional Payment Guidelines*. This decision is not reviewable. This means a decision not to pay provisional weekly payments cannot be disputed or resolved at the Workers Compensation Tribunal under Parts 6A and 6B of the *Workers Rehabilitation and Compensation Act 1986*. Refer to section 50I(b) of the attached extract of the Act.

However, your claim for compensation under Section 52 of the *Workers Rehabilitation and Compensation Act 1986* will be determined and if you are not satisfied with the decision, you can dispute the decision at the Workers Compensation Tribunal under Parts 6A and 6B of the Act. Should there be an undue delay in the determination of your claim, you may apply to the Workers Compensation Tribunal for an expedited determination of the matter.

If you believe the explanation provided to you for not commencing provisional weekly payments was unreasonable e.g., based on wrong information, or you have further information, you may wish to discuss this with your case manager.

If you are dissatisfied with the response from your case manager and you believe the decision does not comply with the *Provisional Payment Guidelines*, you may discuss the matter with the case manager's manager or make a complaint to the WorkCover Ombudsman by contacting the WorkCover Ombudsman as follows:

WorkCover Ombudsman South Australia

Freecall: 1800 195 202

Level 10,
30 Currie Street
Adelaide, S.A. 5000
G.P.O. Box 464
Adelaide, S.A. 5001
Telephone: (08) 8463 6593
Facsimile: (08) 8204 2169
Email: owo@sa.gov.au

Discontinuing payment under provisional liability

Under section 50C(4) of the Act and clause 3 of the *Provisional Payment Guidelines*, provisional weekly payments of compensation may be discontinued by the claims agent in the following circumstances:

- if the worker gave their initial notification by phone and did not provide the claims agent with a completed claim form within 10 calendar days of that notification
- If the worker did not provide a *WorkCover Medical Certificate* when they gave their initial notification and failed to provide the certificate within 10 calendar days of that notification
- if the claims agent receives new credible and substantiated evidence (eg, the worker is not a 'worker' as defined in the Act) that leads to the conclusion that the injury is not compensable, that was not obtained by, or provided to, the claims agent at the time it decided to commence provisional liability and payments began
- if contact with the worker cannot be made despite reasonable attempts being made over seven (7) calendar days
- if the worker consents to the discontinuance of weekly payments
- the claims agent is satisfied, on the basis of a certificate of a recognised medical expert, that the worker has ceased to be incapacitated for work by the notified injury
- the worker has obtained work as an employee, or is self-employed and is earning remuneration equal to or above the rate of the provisional weekly payments of compensation
- the worker is dismissed from employment for serious and wilful misconduct
- the worker breaches the obligation of mutuality [A worker breaches the obligation of mutuality in the same circumstances as are described in sub-sections 36(1a)(a), 36(1a)(d), 36(1a)(e), 36(1a)(f), 36(1a)(fa) and 36(1a)(g) of the Act. (Refer to Discontinuance of weekly payments in Chapter 10 – Review of weekly payments)]
- the worker fails to provide a *WorkCover Medical Certificate* identifying an incapacity for work for a period in respect of which provisional liability payments would otherwise have been payable or
- once the claim for weekly payments under section 52 is determined.

The claims agent must provide the worker with a written notice to discontinue provisional weekly payments and notify the employer accordingly. This notice must be provided to the worker seven (7) calendar days before the decision to discontinue takes effect unless:

- it would result in payments exceeding 13 weeks
- payments are discontinued as the worker has obtained work as an employee or is self-employed and is earning remuneration equal to or above the rate of the provisional payments
- the claim for compensation under section 52 is determined – if accepted, weekly payments will continue under section 35A of the Act or
- the worker consents to the decision to discontinue provisional weekly payments.

The notice informing the worker that provisional weekly payments have been discontinued must include:

- the reason that they have been discontinued, together with all documents and medical reports relevant to the decision
- advice to the worker and employer that they may contact the claims agent for further information.

Under section 50F(1)(a) of the Act, the claims agent may require the injured worker to provide a *WorkCover Medical Certificate* certifying the worker's incapacity for work while they receive provisional weekly payments. If the worker fails to provide a *WorkCover Medical Certificate* within seven (7) days of the request being made, then the claims agent may discontinue weekly payments under section 50F(2) of the Act.

Note:

Provisional weekly payments must be adjusted when a worker returns to work whilst in receipt of payments under provisional liability but is not receiving wages equal to or in excess of the rate of provisional weekly payments, resulting in a reduced remuneration. In such cases, the claims agent should apply section 35A to reduce the rate of the provisional weekly payments payable.

(Refer to Chapter 9 – Payment entitlements)

Provisional liability for medical expenses – section 32A of the Act

By completing the *Claim form*, the worker applies for the payment of medical and other expenses within the ambit of section 32 of the Act **and** in accordance with section 32A(1) of the Act. Payments under section 32A may be up to a cumulative total amount of \$5,000 (indexed)² in respect of a particular injury, provided they are reasonable and necessary for the management of the injury. See Chapter 11, which deals with section 32.

There is no time limit over which these expenses can be incurred, as long as the \$5,000 (indexed) limit is not exceeded.

If the worker has paid for reasonably necessary medical treatment or other expenses, the claims agent should reimburse the worker within 14 calendar days after the worker requests payment.

If medical and other expenses are likely to exceed the \$5,000 (indexed) amount, the claims agent may, pending the determination of the claim for compensation, make interim payments under section 106. Any further information required to determine the claim should be requested and the claim needs to be determined in the normal manner in accordance with the provisions of section 53(4).

Note, the decision to pay medical expenses under section 32A of the Act does not constitute an admission of liability, and the claims agent may determine not to make a payment under this section, despite the fact that the claims agent has previously made one or more payments with respect to the same injury, if it is reasonable to do so.

In accordance with sections 32A(6) of the Act, an amount paid under this section will be set-off against a liability to make payments under section 32 (if a worker's claim for compensation for the same injury is determined and accepted). For example, if a worker is reimbursed for a visit to a physiotherapist under provisional liability, they cannot be reimbursed again for that same visit if the claim is subsequently accepted.

If – after the claims agent makes one or more payments under section 32A of the Act – it is subsequently determined that the worker was not entitled to compensation under this Act, the claims agent may recover the amounts paid as a debt or set off the amount against a right to payment of compensation (see section 32A(8)(a) and (b) of the Act) but only in cases where the worker has acted dishonestly in making an application or providing information for the purposes of this section or any other section of the Act (see

² Refer to Schedule of sum for current indexed amount

section 32A(9) of the Act). The right of recovery under section 32A(8) is subject to and in accordance with the Regulations³

Decisions made with respect to provisional weekly payments or medical and other expenses are not reviewable

Sections 50I and 32A (10) of the Act, state that the following decisions are not reviewable:

Section 32A(10):

- a decision to accept or not to accept liability
- a decision to make or not to make a payment
- a decision to exercise or not to exercise a right of recovery

Section 50I of the Act:

- a decision to make a provisional weekly payment of compensation
- a decision not make a provisional weekly payment of compensation after it is established that there is a reasonable excuse
- a decision to discontinue weekly payments of compensation under sections 50C and 50F
- a decision to continue or not continue weekly payments of compensation under section 50G
- a decision to exercise or not exercise a right of recovery under section 50H

The worker and employer do, however, have the right to raise a complaint with WorkCover or the WorkCover Ombudsman.

³ Refer to Regulation 36, 'Recovery of certain amounts paid to workers', *Workers Rehabilitation and Compensation Regulations 2010*.

Waiver of employer excess for the first two weeks of incapacity

An employer is entitled to a waiver of the first two weeks of weekly payments if the claims agent is satisfied the employer has complied with their responsibilities:

- under section 52(5) of the Act and/or
- given notice under section 50A of the Act

within five calendar days of having been advised of the worker's injury– refer to section 46(8b) of the Act and clause 2.2.6 of the *Provisional Payment Guidelines*.

In order to comply with section 52(5) of the Act and waiver of excess provisions, the employer should send the *Claim form*, the *Employer Report Form* and any WorkCover Medical Certificates to the claims agent within five calendar days of receipt of the claim.

If this has occurred, the claims agent will then advise the employer that they do not have to pay for the first two weeks of the (provisional) weekly payments or, if they have already paid, that they are entitled to seek reimbursement of those payments.

The *Claim form* includes a section which asks when the employer was notified and the name of the person contacted. This information should also be collected when telephone notifications are made before a *Claim form* is submitted.

In the event that the worker, or another party has notified the claims agent first, and the employer then also notifies the claims agent within five calendar days of the worker notifying the employer, the employer will still be entitled to the waiver of the first two weeks of weekly payments.

However, the waiver in respect of provisional weekly payments will not apply if the employer has unreasonably failed to provide the necessary information required by the claims agent to determine the AWE correctly within five calendar days of the request being made – refer to clause 2.2.7 of the *Provisional Payment Guidelines*. It is therefore imperative that the claims agent documents its contact with the employer requesting AWE information. What is reasonable and/or unreasonable should be decided on a case-by-case basis.

The claims agent will need to notify the employer in writing of their decision whether or not to waive the first two weeks of weekly payments and include reasons if they do not waive.

Dispute process if claims agent decision is not to waive the employer's excess

Claims agents must refer to the operational procedure for the dispute process where the employer does not agree with the claims agent's decision not to waive the first two weeks of weekly payments.

Employers exempted by regulation from requirement to register and pay the first two weeks of income maintenance on a claim for compensation

Some employers are exempted from the requirement to register with WorkCover by Regulations⁴ These regulations provide two categories of exemption for employers who employ workers (as defined by section 3 of the Act.)

(1) An employer is exempted from the requirement to register:

- (a) where the employer's workers are not employed for the purpose of a trade or business carried on by the employer (eg, employer employing someone to clean their home) and
- (b) where the total remuneration payable by the employer to its workers in a financial year does not exceed the regulated amount⁵ for the financial year.

Where a worker suffers a compensable injury arising from employment with an employer in this category, the exemption continues to apply.

(2) An employer is exempted from the requirement to register:

- (a) where the employer's workers are employed for the purpose of the trade or business carried on by the employer and
- (b) where the total remuneration payable by the employer to the workers in a financial year does not exceed the same regulated amount as in (1)(b).

Where a worker suffers a compensable injury arising from employment with an employer in this category, the exemption ceases to apply⁶ from the date of the occurrence of the injury until the end of the financial year in which the injury occurs.

Employers in the above two categories are also exempted from the operation of section 46(3), namely the requirement to pay the first two weeks' income maintenance on a claim for compensation.

⁴ Refer to Regulation '9 – Registration of employers', *Workers Rehabilitation and Compensation Regulations 2010*.

⁵ For the regulated amount for the relevant financial year, refer to 'Section 59(2) – Minimum remuneration before registering' in the Schedule of Sums on WorkCover's website.

⁶ An employer required to be registered by WorkCover must apply for registration within 14 days after the obligation to register arises (section 59(3) of the Act).

Claims must identify the correct employer location registration

WorkCover has an industry-based classification system, the South Australian WorkCover Industrial Classification (SAWIC), which assigns an appropriate industry class for each employer's location. The premium rate payable for each location is based on the SAWIC rate assigned to that location. As this is the basis for collecting premiums the claims agent must identify the correct location for each claim.

Employment services (labour hire) employers

There are employers who have registered locations whose predominant activity is to provide 'employment services' (ie, as in labour hire where they provide their workers to 'other' employers). These employers pay their worker's wages and pay premium based upon these wages.

If a worker employed by an 'employment services' employer (as in labour hire) lodges a claim because of an injury occurring at a work site they have been sent to by their 'employment services' employer, the worker's claim needs to be lodged against the correct location of the registered 'employment services' employer. The claims agent needs to contact the 'employment services' employer to identify the correct location number for the claim. The claims agent should advise their Recoveries Unit of the injury so that any common law potential regarding the 'other' employer is identified. (The 'employment services' employer should be providing this information on the *Employer Report Form*.)

Note: For WorkCover classification premium purposes, 'employment services' refers to the activities of providing workers to others (this should not be confused with 'employment placement services').

Claims where there is no active location registration

The claims agent may receive a claim regarding a worker where an 'active' location registration number cannot be identified. Those claims might involve employers:

- (a) whose location registration was 'active' at the time the worker sustained the work-related injury being claimed, however, upon further investigation, it becomes apparent that the employer is now self-insured
- (b) who are registered with Comcare
- (c) whose location registration was 'inactive' at the time the worker sustained the work-related injury or at the time the claim is made
- (d) who have never been registered
- (e) who are exempt from the requirement to register because the remuneration that is payable to their workers is less than the regulated amount
- (f) whose location registration was active at the time the injury was sustained and has been subsequently cancelled.

1. Once a claim is received, the claims agent will:

- ensure all documentation has been fully completed and follow up on any missing information
- ensure all documentation has been dated and, if appropriate, has been date-stamped
- identify the employer location and check Cúram for employer/location details
- notify the worker that their claim has been received
- verify with the worker the employer location details at the time of injury.

2. Where it is identified that the employer falls under the category listed in (a) and (b) above, the claims agent should contact the worker and advise the worker that, as their employer has been identified as a self-insured employer or registered with Comcare:

- their claim is not managed by the claims agent and the worker needs to report their injury directly to the worker's employer if they have not already done so
 - the worker will need to advise the claims agent in writing that they wish to withdraw their claim, as, for the reasons mentioned above, their claim will be rejected
 - if the claims agent rejects the claim for the reasons above, the worker has to be notified in writing of the reasons for the rejection.
3. Where the claims agent is unable to locate an 'active' employer/location registration number because the employer falls into category (c), (d),(e) or (f), the claims agent must:
- photocopy the documents relevant to the claim (for employer location identification purposes)
 - send the copied documents to the Team Leader, Premium Operations at WorkCover
 - create and manage the new claim against the 'unknown' employer registration until WorkCover advises them of the employer/location registration number and the details.

This includes determining the claim and/or making provisional weekly payments (including medical under section 32A) where appropriate.

Once advised by WorkCover, the claims agent must enter the new employer/location registration number against the claim on Cúram.

Where an employer is exempted from the requirement to register because:

- (a) the employer's workers are employed for the purpose of a trade or business carried out by the employer
 - (b) the total remuneration payable by the employer to the workers in a financial year does not exceed the regulated amount⁷
- and
- (c) the exemption has ceased because a worker has lodged a claim

the new employer/location registration will only be active for the period ranging from the date of the injury of the claim until the end of the financial year in which the injury occurred.

- 4. When an employer's location registration is deactivated (ie, cancelled), any weekly payment reimbursements payable to the employer location received after the date of cancellation but for a period the location was active can be keyed on Cúram.
- 5. When an employer's location registration is deactivated (ie, cancelled), any weekly payment reimbursements payable to the employer location for a period after the date of cancellation will need to be paid as a manual payment
- 6. In those cases, where the claims agent has verified that the employer is exempted from the requirement to register because:
 - (a) the employer's workers are not employed for the purpose of trade or business carried on by the employer (eg, domestic employer employing someone to clean their home)
 and
 - (b) the total remuneration payable by the employer to the workers in a financial year does not exceed the regulated amount⁷ for the financial year
 the claim will continue to be managed without an employer.

⁷ For the regulated amount refer to Schedule of Sums on WorkCover's website.