

How the Workers Compensation and Injury Management Act 2023 (WA) changes affect management of public liability claims

1. New definition of “worker”

WHAT IS NEW?

- Only contractors who do work that is not in the course of or incidental to a trade or business regularly carried out by that contractor will be considered a “worker” and therefore be entitled to compensation.
- **No compensation** provided to people who are working with an ABN and contracting out their services to various different entities.



WHAT DOES THIS MEAN?

- Review your contracts and make sure your sole trader contractors are required to take out income protection insurance.
- Review your existing public liability policy to ensure you have sufficient coverage to mitigate against the potential risk of increased claims resulting from sole traders who are no longer covered in the definition of “worker”.

2. Potential increase in the quantum of workers’ compensation recovery claims

WHAT IS NEW?

- **Medical and health expenses** are capped at **60%** of the general maximum general limit, rather than 30% under the former Act.
- An additional type of compensation known as Miscellaneous Expenses Compensation is included, which has no statutory limit.
- Income compensation payments continue at a higher initial rate for **26 weeks** instead of the former 13 week period.



WHAT DOES THIS MEAN?

- Overall **increase** in the quantum of workers’ compensation recovery claims.
- If you have a large excess on your public liability policy, you may find that you are eroding that excess more often than not.

3. New settlement regime

WHAT IS NEW?

- Statutory claims need to be settled using the statutory forms, and the **statutory form** only releases employers from future liability. **It does not allow workers to also release principals** from potential future liability.



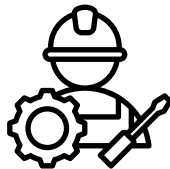
WHAT DOES THIS MEAN?

- Principals will need to turn their minds to how they want their contractors to obtain a release from the worker at the same time as the statutory claim is settled.
- Insurers who offer principal’s indemnity extensions should also have a plan and proposed settlement mechanism for obtaining concurrent releases against principals.

4. Labour hire arrangements - new obligation for host employers

WHAT IS NEW?

- Host employers have an obligation to cooperate with labour hire employers to ensure that a worker is provided with a suitable position during the 12-month period from the worker’s first date of incapacity.
- A failure by the host to cooperate carries a fine of up to **\$5,000**.



WHAT DOES THIS MEAN?

- Principals will now need to play a more proactive role in injury management of their labour hire workforce. You may need to factor this into the terms of your contract with your labour hire suppliers.

5. Principal’s indemnity extensions

WHAT IS NEW?

- WorkCover does not intend to use their prosecutorial powers to govern the contractual arrangements between principals and contractors, so principal’s indemnity extensions are still permissible.



WHAT DOES THIS MEAN?

- You should nevertheless review your contracts to ensure that any contractual indemnities do not seek to override the employer’s right to indemnity in the Act.