



Post 88 **Workers Compensation** Procedures & Entitlements

Information Booklet for Members

C.A.R.E.

Career and Resilience Education Program

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Please contact the relevant persons listed in the contacts section of this booklet for further advice.

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INTRODUCTION

There are two different Workers Compensation schemes available to NSW Police Officers. Which of the two Schemes applicable to a particular Police Officer depends on the date on which that Police Officer was attested as a member of the NSW Police. For practical purposes, the two schemes are generally referred to as the Pre 88 scheme and the Post 88 scheme.

Pre 88 Police Officers are those officers who were attested prior to 1 April 1988. These Police Officers are specifically excluded from certain aspects of the *Workers Compensation Act 1987*. The Superannuation benefits and some of the Workers Compensation benefits relevant to such Officers are derived from the provisions of the *Police Regulation (Superannuation) Act 1906*.

The benefits provided under that Act include but are not limited to:

- Pension entitlements upon being exited from the New South Wales Police medically unfit as a result of a HOD injury;
- Pension entitlements upon being exited medically unfit as a result of a non-HOD injury (only if more than twenty (20) years service);
- Lump sum payment upon being exited medically unfit as a result of a non-HOD injury (only if less than 20 years service);

- Lump sum payments for permanent impairment injuries.

The Pre 88 scheme was closed on 1 April 1988. The scheme continues to apply to those Police Officers who were sworn in prior to 1 April 1988 and who did not elect to convert to First State Super in 2000.

Post 88 Police Officers are those Officers who were attested on or after 1 April 1988. Police Officers sworn on or after 1 April 1988 or members who elected to convert to First State Super¹ are considered 'workers' under the *Workers Compensation Act 1987*. Therefore, the relevant Workers Compensation rights and entitlements applicable to Post 88 Police Officers are provided under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

In June 2012 the NSW Government made significant amendments to Workers Compensation. Your Association successfully achieved an exemption for police officers being affected by any of the amendments. Therefore the original provisions of the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* remain for all injuries sustained as a police officer and all footnotes in this booklet reference sections of the Act in place prior to June 2012. These entitlements are outlined within this booklet.

¹ For injuries that occurred post conversion date

The information that follows in this booklet covers entitlements and procedures for members who were sworn in AFTER 1 APRIL 1988 under the Workers Compensation Act 1987.

PART A: Procedures & Process

1. When are Workers Covered by Workers Compensation?

Generally speaking, a worker is entitled to compensation for work related personal injuries suffered between the time the worker leaves his or her place of abode for the purpose of travelling to work and until he or she returns home. Workers are covered at the workplace and away from the workplace, provided the injury arose out of or in the course of employment and provided the employment concerned was a substantial contributing factor to the relevant injury ².

Workers are also covered during

- Coffee or lunch breaks or other ordinary recesses ³
- An authorised absence from the workplace (eg. your supervisor gives you permission to visit the bank) ⁴
- Work related interstate or overseas trips
- Whilst not officially rostered for duty, in certain circumstances, you **may** be covered if you are forced to recall yourself to duty to deal with an urgent situation

- When undertaking authorised trade union duties ⁵
- For injuries suffered in the course of most journeys to and from the place of employment or any other place you are required for work-related reasons ⁶

Please Note: There are restrictions upon journey claims: you are generally not covered by Workers Compensation if the injury was received during or after any interruption of or deviation from the relevant journey. Such interruption or deviation being unconnected with the employment or the journey.

Further, you are generally not covered by Workers Compensation if the relevant injury (not death or serious and permanent disablement) was solely attributable to your serious and wilful misconduct ⁷. For example, an injury is deemed to be attributable to your serious and wilful misconduct if at the time of the injury you were under the influence of alcohol or any drug within the meaning of the Road Transport (Safety and Traffic Management) Act 1999 (unless it did not contribute in any way to the accident or if you did not take the alcohol or drug voluntarily). ⁸

² Section 9A (1) Workers Compensation Act 1987

³ Section 11, Workers Compensation Act 1987

⁴ Section 11, Workers Compensation Act 1987

⁵ Section 12 Workers Compensation Act 1987

⁶ Section 10 Workers Compensation Act 1987

⁷ Section 14 Workers Compensation Act 1987

⁸ Section 10 (1) (b) Workers Compensation Act 1987

Serious and Wilful Misconduct

includes a notion of 'gross misconduct' which takes workers outside the course of employment. It has been interpreted as "conduct beyond negligence...the person performing an act or suffering an omission knows that it will cause risk of injury, or acts in disregard of consideration whether it will cause injury" ⁹. The employer bears the onus of proving serious and wilful misconduct.

Special Rules for Psychological Injuries

NO compensation is payable for psychological injuries if the injury was:

- Wholly or predominantly caused by reasonable ¹⁰ action taken or proposed to be taken; by or on behalf of the employer;
- With respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of the worker or provision of employment benefits ¹¹.

Example: If you suffer a psychological injury primarily as a result of being unsuccessful in obtaining promotion or as the result of a transfer, you may not be eligible for compensation.

2. How to Lodge a Claim for Workers Compensation: Period of Absence or Medical Expenses

If you are injured at work you must follow certain steps:

• Report the Injury

Report the injury as soon as possible to your Commander/Manager/Supervisor ¹².

• P902 Online Incident Notification Form

Complete the **P902 Form** or ring the Injury Hotline on 1800 996 336 which is available 24 hours, 7 days a week.

If the injured worker is unable to complete this form due to the injury, it may be completed on their behalf by a supervisor or colleague. NSWSP is required to submit a P902 form within 24 hours of an incident occurring.

You should remember that you must record any injury whether serious or not on the register of injuries.

• Workers Compensation Claim Form

You may be required to complete a Workers Compensation Claim Form and submit it to Employers Mutual Limited ('EML'). If EML are of the view that a claim form is required, this will be provided to you. Claims forms can be obtained from EML direct or via their website www.employersmutual.com.au

It is also normal protocol to complete a **COPS** entry relating to the matter if required.

⁹ *Sawle v Macadamia Processing Co Pty Ltd* (1999) 18 NSWCCR 109

¹⁰ Note: What amounts to reasonable will be considered on a case by case basis

¹¹ Section 11A Workers Compensation Act 1987

¹² Section 44 Workplace Injury and Management and Workers Compensation Act 1998

• Injury on the Journey Form

This form must be completed if the incident that occurred was a motor vehicle accident or a journey to or from work.

If the injury was sustained in a motor vehicle accident where you were NOT the at fault driver, you may have additional rights under the Motor Accidents Compensation Act 1999 (MACA). However, the MACA claim form is required to be lodged within 6 months of the date of accident. Late claims can only proceed if you are able to provide a full and satisfactory explanation for the delay in lodging that claim form.

If the injuries you sustained in a motor vehicle accident, either in the course of your employment, or on a journey to or from work are serious, your rights under Motor Accidents Compensation Act may be more valuable to you, than your rights under the Workers Compensation Act.

We recommend that if you sustain an injury in a motor vehicle accident where you were not the at fault driver, you should seek immediate legal advice which can be obtained by contacting the Police Association of NSW for referral to a panel solicitor.

• See a Doctor

You are entitled to choose your own doctor, this Doctor must be WorkCover accredited (with a provider number) who will then be able to issue

you with a WorkCover certificate of capacity.

• WorkCover Certificates of Capacity

It is essential that an original WorkCover certificate of capacity from your medical practitioner be supplied with your claim if you are absent from the workplace (e.g. from your general practitioner or treating specialist). If you are unable to find a doctor you can visit a hospital in order to obtain a WorkCover certificate. The WorkCover certificate of capacity should be provided to the NSW Police Force as soon as possible to ensure wages are paid.

Certificates from psychologists, physiotherapists and chiropractors do **NOT** suffice because they are not considered to be medical practitioners under the Medical Practitioners Act 1938 or under any law in Australia.

Whilst reports from a psychologist, physiotherapist or chiropractor may assist in providing relevant information for assessment as to liability, a certificate from them will not be acceptable as an initial medical certificate when making a claim. You must supply a WorkCover certificate of capacity from your general practitioner or treating medical specialist ¹³.

• Backdated Certificates

You should also note that backdated certificates are generally **NOT** accepted. You must obtain a medical certificate on the first day for which

¹³ Section 4 Workplace Injury Management and Workers Compensation Act 1998 as defined

you are claiming compensation. The exception to this is where there may have been an emergency, treated in an accident and this is the first visit attending the treating Doctor. The Doctor must then nominate the period for which they believe the patient was unfit for work. If you are unable to attend the doctor's surgery due to the injury or illness, you should try and have a doctor make a house call to obtain the relevant certificate (the cost of this house call will form part of your claim). If it is impossible due to all doctors being unavailable, EML would require you to be able to demonstrate your genuine attempts. A statutory declaration may be considered in extreme circumstances.

The Workers Compensation Act also provides that the medical certificate for a **psychological injury** must use, for the purpose of describing the worker's condition, accepted medical terminology, for example 'Post Traumatic Stress Disorder' or 'Major Depression' and not terminology such as 'stress' or 'stress condition'.¹⁴

• Make a Claim

Notification must be made within seven (7) days or forty-eight (48) hours if the injury is significant¹⁵. The employer will be provided with a Notification Number and members should obtain a copy of this number as the number usually becomes your claim number. Your employer must forward your claim to its Insurer with 7 days.

Commanders must submit claims notwithstanding the fact that investigations into the incident may not have been completed.

If your employer has not reported the injury or forwarded your claim to the Insurer, contact the **Police Association Information Organising Centre** on (02) 9265 6777 or E/N 57071 for further advice. Alternatively WorkCover has a Claims Assistance Service that can make sure the injury is notified. The **WorkCover Claims Assistance Service** can be contacted on 13 10 50 or email at contact@workcover.nsw.gov.au

Please Note: As well as issues relating to reporting of injuries, The WorkCover Claims Assistance Service also provides advice relating to payment of benefits, delays in treatment and medical expenses and return to work issues.

• Initial Notification

You should note that whilst your employer has an obligation to notify the Insurer¹⁶, '**Initial Notification**' to the Insurer can be made by anyone, for example a co worker, relative, or friend. Any form of notification is acceptable including electronically, in writing, or over the telephone.

The current New South Wales Police Insurer is **Employers Mutual Ltd** and they can be contacted by telephone on 1800 469 931 or (02) 8251 9000. Notification can also be made on line at www.employersmutual.com.au

¹⁴ Section 11 A (7) Workers Compensation Act 1987

¹⁵ A significant injury is an injury where the worker is unable to do their normal work for 7 or more consecutive days, whether or not they were due to work any of those days. An exact definition is provided within Section 42 Workplace Injury Management and Workers Compensation Act 1998

¹⁶ Section 44 of the Act provides time frames for reporting by the employer as outlined.

The notification should include the following:

- Full contact details of injured worker including Injured person's name, residential address, date of birth and contact phone numbers
- Employer's name, current business address and contact phone numbers
- Treating doctor's name or if the injured worker was hospitalised, the name of the Hospital and contact details for the Doctor
- Date of workplace injury; description of how the injury happened and a description of the injury
- The person notifying must provide their name and relationship to the worker or employer, their contact details - telephone or address etc.

3. When a Claim is Only for Medical Expenses

The procedure for claiming medical expenses is exactly the same as a claim for a period of absence as outlined above. If you continue to have only medical expenses for an approved claim, the accounts may be forwarded directly to EML with the claim number which would have previously been issued to the claimant.

EML will continue to review the liability status on a regular basis. If

treatment is lengthy, it is suggested you supply a letter or Work Cover certificate of capacity from your doctor stating the necessity for the ongoing treatment. Generally a treatment plan is required from the provider and doctor in relation to ongoing treatment sessions. EML will then determine the reasonableness of the ongoing treatment. EML have the responsibility for paying the medical expenses directly to the provider, the employer does NOT have a role in these payments.

It is preferable that providers bill EML directly to save the injured Officer having to outlay the monies. This will ensure the treatment provider is complying with WorkCover requirements for treatment.

4. Who Determines if an Injury or Illness is Work Related?

All claims relating to work related illness or injury suffered by a Police Officer attested after 1 April 1988 are determined and administered by the Treasury Managed Fund (TMF) Insurer Employers Mutual Limited (EML).

5. What if You Have an Injury/Illness but Do Not Incur Time Lost or Medical Expenses?

It is at your discretion whether you lodge a claim in these circumstances. Obviously there is no financial gain

as you have not suffered any financial loss. If you choose to lodge a claim, the process is the same as outlined above.

However, the on-line Incident Notification form should be completed. A copy of this should be retained should an issue arise at a later date relating to the incident.

If liability is not accepted by the Insurer, there is no entitlement to have the determination reviewed by the Workers Compensation Commission unless you have sustained a monetary loss.

6. Ongoing or Recurring Injuries

If you have an ongoing injury that requires further absences from work or further medical expenses you may not need to lodge a new claim. However, a new WorkCover certificate of capacity, obtained on the first day of absence, will be required after every additional absence from work. You should submit a report outlining the symptoms and injury. A decision will be made by EML whether it is a recurrence of an original injury or whether it is a new claim as a result of a further incident causing aggravation. A TMF Recurrence of injury claim form should be completed if it is a recurrence. This form can be obtained from EML.

You must continue to lodge original WorkCover certificates of capacity for the duration of a workers compensation claim.

Remember: Backdated certificates are generally not acceptable.

7. Time Limits for an Employee to Lodge a Claim

The Legislation requires that a claim be made within six (6) months of the injury, accident or date of death ¹⁷ (or becoming aware of the injury).

However, failure to make a claim within six (6) months is not a bar to recovering compensation if the failure was a result of ignorance, mistake, absence from the State or other reasonable cause, provided the claim is made within three (3) years after the injury ¹⁸.

Further, no claim will be barred for falling outside the three (3) year period if it is found that it is in the interest of justice that the claim not be barred ¹⁹.

Further, a claim for compensation for death or serious and permanent impairment may be made at any time.

Any member who believes they have a genuine claim which has not been lodged within the time limits, should seek immediate legal advice from the Police Association of NSW who can refer members to a panel solicitor to ensure their rights are protected.

¹⁷ Section 65 (7) Workplace Injury Management and Workers Compensation Act 1998

¹⁸ Section 65 (14) Workplace Injury Management and Workers Compensation Act 1998

¹⁹ *ibid*

8. The Process After Lodging the Claim

When EML receives a claim from the employer, the following occurs:

- **The Claim**

The claim will be referred to an EML Case Manager. Your claim will begin to be assessed immediately.

- **Further Information**

The Case Manager may obtain any further relevant information necessary to determine the claim and make an assessment. This may involve obtaining further factual information from the Command. The Insurer may contact you shortly after the claim is lodged and request that you provide specified information in addition to that provided on the claim form. You should comply with reasonable requests for the provision of further information. You may also be requested to attend a medical examination with a doctor or specialist. The Insurer must make sure that the appointment is at a reasonable time. The Insurer is responsible for paying for this medical appointment.

- **Determining if the Injury is Work Related**

As the current Insurer for the New South Wales Police, EML is responsible for determining the issue of liability. They are responsible for deciding if periods of absences,

medical expenses or permanent injury are the result of a work related injury and are therefore compensable under the Workers Compensation laws.

- **What factors will be Considered to Determine the Claim?**

The decision is based upon consideration of all information including information and advice from other organisations and health professionals. EML will make inquiries with your employer and seek relevant documents to verify your claim. The type, extent and method of inquiry undertaken will depend upon the nature of each individual claim.

Some examples are:

- Requesting further information from the New South Wales Police, e.g. COPS entries, factual information, work history, traffic accident report, etc.
- Interviewing other employees of the New South Wales Police, a fact sheet can be obtained from EML for witnesses.
- Seeking further information/ reports from your treating doctors, previous employers, Police or other witnesses etc.
- EML may request information regarding any other insurance claims the applicant may have made currently or previously, e.g. third party claims

-
- EML may arrange for the injured worker to be assessed by an independent specialist or doctor in relation to their injury.

Receipt of workers compensation benefits may affect your entitlement to receive payments pursuant to other policies of insurance, such as income protection insurance. It is important that any member who lodges or is considering lodging more than one insurance claim, seeks legal advice in relation to this aspect.

Under the *Workers Compensation Act 1987*, it states that employment must be a substantial contributing factor to the injury. The following are examples of matters to be taken into account for the purposes of determining whether a worker's employment was a substantial contributing factor to an injury (but this subsection does not limit the kinds of matters that can be taken into account for the purposes of such a determination):

- The time and place of the injury
- The nature of the work performed and the particular tasks of that work
- The duration of the employment
- The probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she had not been at work or had not worked in that employment

- The worker's state of health before the injury and the existence of any hereditary risks
- The worker's lifestyle and his or her activities outside the workplace

Remember: Throughout the entire process including while your claim is being assessed, you must continue to provide up to date WorkCover certificates of capacity for any periods that you are absent or restricted from work.

9. Time Limits on the Insurer Provisional Liability

Under Workers Compensation Legislation, injured employees can obtain access to weekly compensation payments for up to twelve (12) weeks from the date of incapacity and also medical expenses up to \$7,500 can be approved prior to a decision being made as to liability. These payments are made under provisional liability provisions ²⁰.

Payments made under this provision **DO NOT** mean that the claim has been accepted.

Insurance companies must now begin paying provisional weekly payments within seven (7) days after receiving an initial notification of injury (unless there is a 'reasonable excuse'). If an Insurer fails to pay within seven (7) days, they can be fined. The seven (7) days commences from the time the notification number is issued and

²⁰ Section 274 Workplace Injury Management and Workers Compensation Act 1998

not when the claim is received. The notification number can be issued over the telephone.

Reasonable Excuse

The WorkCover guidelines set out 'what is a reasonable excuse':

- Unable to contact injured worker
- Insufficient medical evidence
- Worker is not an employee
- Worker refuses to sign privacy clause on the claim form
- Injury is not work related
- Injury is notified after two months
- Injury is not significant

If the Insurer decides not to pay using one of the reasonable excuses listed above, they must write to the worker within seven (7) days of the notification advising this. A formal claim form will then be required.

If the Insurer decides to commence provisional weekly payments, then the payments are to start within seven (7) days after the initial notification. The Insurer must also give you written notice about the decision to commence payments and outline the details of the payments.

Rejected or Fraudulent Claims

If the Insurer pays provisional liability benefits and later rejects the claim, they cannot get the money back unless fraud is involved.

Assessment of Claims

If **provisional liability is accepted**, the Insurer has up to twelve (12) weeks in which to make a determination as to actual liability of the claim. If the Insurer pays provisional liability benefits and later declines the claim, they cannot seek reimbursement from you unless fraud is involved.

If the **Insurer declines provisional liability**, they have twenty one (21) days in which to make a decision as to actual liability, with the provision for an extension of a further twenty one (21) days in specified circumstances ²¹.

If these timeframes are not being adhered to, contact should be made with your Association who can assist with liaising with the Insurer on your behalf for a determination to be made.

10. How will You Know if a Claim is Accepted or Declined?

Notification

The Insurer will notify you and the employer in writing of the decision.

If liability is declined

The notice must include:

- A statement of reasons why the claim is disputed
- All documentation that the Insurer has relied upon in determining the claim

²¹ Section 93 Workplace Injury Management and Workers Compensation Act

- A statement that the worker may appeal the decision
- A statement that the worker can also seek advice from the worker's union or lawyer

EML will also notify you and the employer.

If liability is accepted

Once again you must be given notice in writing. The employer will also be notified.

If provisional liability was initially denied and weekly compensation money is owing to you from EML, arising from the accepted claim, this will be forwarded to the employer. The result will be that any normal sick leave you have utilised will be recredited to your sick leave bank or should you have been without pay, you will be restored to the pay roll and back paid.

Any medical expenses owing to a provider or claimant will be forwarded directly to them from EML. Once again, the employer has no role in these payments.

When a claim is approved, this does not mean it is automatically approved forevermore. The Insurer is required under the Act to review the question of liability on a regular basis. For this process, they may require further medical or other documentation from you and may require you to attend a medical practitioner nominated by the Insurer.

In particular, if a period of absence is approved, approval is **ONLY** granted for that period. Any further absences must be assessed separately as to liability and a WorkCover certificate of capacity (obtained on the first day of absence) is essential for each period of absence and provided to your Employer as soon as possible.

11. What Happens when a Claim is Declined?

The Insurer must advise the injured worker in writing of the claim being declined. In this letter it must also advise the following:

- The specific nature of the Workers Compensation claim or aspect of the claim that is in dispute, the decision made and the basis for that decision.
- A statement indicating that the matters that may be referred to the Workers Compensation Commission (WCC) are limited to matters notified in the dispute notice or in a dispute review notice.
- Reasons why the Insurer is disputing liability. The reasons should refer to those parts of the Workers Compensation Legislation and regulations relied upon by the Insurer for its decision.
- A statement identifying all reports and documents relevant to the claim or aspect of the claim to

which the decision relates. All of the reports in the possession of the Insurer that were considered in making the decision to dispute the claim or any aspect of the claim. These reports must be attached to the dispute notice.

- A statement identifying the reports and documents submitted by the worker in making the claim.
- A statement indicating that the worker can request a review of the claim by the Insurer (optional review). Please note, legal advice should be obtained prior to any review being lodged with the Insurer.
- Statement advising the injured worker that they may contact WorkCover on 131050, seek assistance from their union or a lawyer and they can refer the dispute to the registrar for determination by the WCC.

The Association under the Financial Legal Assistance Scheme provides financial legal assistance to dispute matters before the Workers Compensation Commission. Contact the Association's office for further details.

12. The Stakeholders Involved in the Management of a Workers Compensation Claim/Injury

Insurer

EML are responsible for the determination of liability for the claim and will contact the injured worker to discuss the claim, treatment and return to work. Contact is usually made with the injured workers early during the claims process.

Doctors

An injured worker has the right to elect their own treating Doctors, these Doctors will be contacted by the Insurer as part of the claims process. Doctors will also be consulted in relation to Work Cover certificates of capacity, treatment recommendations, return to work plan development and discussions concerning the provision of suitable duties. Some Doctors require WorkCover accreditation to be able to manage workers compensation claims, please confirm the accreditation of your Doctor prior to attending consultations.

Employer

The Employer has an obligation to remain in contact with the injured worker and facilitate return to work on suitable duties. The Employer will be involved in the development of return to work plans where suitable duties must be offered to an injured worker.

Rehabilitation Provider

NSWPF employs Injury Management Advisors to assist injured workers return to work in NSWPF on suitable duties. This is designed to gradually get injured officers back to full duties within NSWPF. IMA's will contact injured workers to discuss treatment, return to work and Work Cover certificates. This may be via telephone or face to face.

Union

An injured worker has the right to elect to involve their union, whether it be as part of the claims process or for assistance with return to work and the provision of suitable duties. A third party form may be required when dealing with the Insurer on an injured workers behalf.

Please note: Injured workers have the right to choose their own rehabilitation provider, a request for the services of a provider can be arranged through EML.

PART B: Entitlements

1. Workers Compensation Leave Entitlements for a Workers Compensation Illness/Injury

There is no limit to the amount of Workers Compensation leave a worker can receive.

2. Workers Compensation Payment Entitlements When You Are Totally Unfit for Work

First 26 weeks ²²

During the first twenty-six (26) weeks of incapacity, an injured worker who is totally incapacitated for work is entitled to receive his or her current weekly wage rate, for police officers this is their loaded award wage which is inclusive of loadings and allowances in the nature of salary. It would not include overtime or shift allowances. You can also in certain circumstances claim loss of salary from secondary employment.

For each separate injury or illness sustained in the course of your employment, such injury or illness resulting in total incapacity for work, you are entitled to twenty-six (26) weeks absence on your current weekly wage. The normal weekly wage is your loaded salary.

For Example

- Julie suffers a knee injury and is off on workers compensation leave for five (5) weeks
- Two (2) years later she suffers a period of depression and is off on workers compensation for four (4) weeks
- Six (6) months later she suffers a relapse of the first knee injury and is off on workers compensation for a further five (5) weeks

At this point, Julie will have two separate twenty six (26) week periods running, one for the knee and one for the depression. With respect to the knee injury, Julie will have sixteen (16) weeks remaining of the 'first 26 weeks'.

With respect to the psychological injury, Julie will also have a separate twenty-two (22) weeks remaining of the 'first 26 weeks' applicable to that injury.

After 26 weeks ²²

After the first twenty-six (26) weeks of total incapacity under the Workers Compensation Act, the injured and incapacitated worker is then entitled to the "statutory rate" provided under the Legislation which is paid for by the Workers Compensation Insurer. However, there is available for serving Police Officers a further 13 week period of top up beyond the initial 6 month period ²⁴.

²² Sections 34 and 36, Workers Compensation Act 1987

²³ Section 37, Workers Compensation Act 1987

²⁴ Section 125A Police Regulation 2008

This provides full 'normal salary' for officers who are incapacitated for work for a full period of 6 months and 13 weeks whilst they remain employed with NSW Police Force.

Please note: If you resign, retire or are medical exited from the New South Wales Police, you will cease to be eligible for 'top up' payments from the NSW Police.

After 9 month top up period expires

The injured and incapacitated worker is entitled to the "statutory rate" provided under the Legislation which is paid for by the Workers Compensation Insurer via the NSWPF payroll. These rates are available on the WorkCover website www.workcover.nsw.gov.au or contact can be made with your Association for advice on the current rates.

On the 20th January 2012 NSW Police Force and the Government entered into an Insurance arrangement with First State Super which provides for an Income Protection scheme providing for 75% of salary maintenance for a period of 5 years for on duty matters which is offset by any other income earned. This includes wages and workers compensation.

As of 1 October 2013, the benefit period for salary maintenance for on duty matters was increased to 7 years. The increased benefits apply to injuries that occur and cause

incapacity after the 1 October 2013, provided officers meet the eligibility requirements.

For further information relating to this scheme and its benefits, please refer to the First State Super Product Disclosure Statement which can be obtained by contacting First State Super or via their website www.firststatesuper.com.au

3. Weekly Benefits for an Injured Worker Returning to Work on Suitable Duties

If an injured worker returns to work on partial duties (restricted duties or hours) and earns less than before the injury – because they may be working reduced hours or the suitable duties are at a lower pay rate than their pre injury job, then an additional amount called 'makeup pay' will be paid.

If the worker is earning less money, their total weekly wage will be made up of:

- The value of duties worked that week paid by the employer as wages; and
- 'Makeup pay' or Section 40 benefits paid by the Insurer as Workers Compensation.

'Makeup pay' is the difference between the worker's normal gross weekly wages before the injury referred to as pre injury earnings (including overtime, shift work, payments for special expenses and penalty rates averaged

over a 12 month period prior to your date of injury) and the actual weekly earnings after the injury (i.e. value of the duties worked).

Generally the amount of 'makeup pay' is capped at the Award for the first twenty-six (26) weeks and the statutory rate after 26 weeks.

These payments should be automatically generated by the SAP system where the GAO should submit to the workers compensation unit a P905 form each fortnight. Your fortnightly pay should then reflect the 'makeup pay' being paid to you. Your Command should be submitting P905 forms through to ICS outlining your fortnightly wage on restricted duties compared to your pre injury wage.

Your amount of Section 40 pay should be the different from your pre injury wages inclusive of pay rises etc compared to your current normal earnings on restricted duties.

If this is not occurring for you, officers should consult with their GAO/pay officer to clarify these payments. Queries regarding these calculations can then be directed to the Workers Compensation Unit in NSWPF or your Association who can assist.

Please Note: WorkCover certificates of capacity are required in order for Section 40 payments to be made. Remember to always be covered by WorkCover certificates of capacity when on periods of restricted duties or RTW plans.

Example: Officer on a return to work plan working 30 hours per week.

- 30 hours wages paid by NSW Police Force (or applicable employer) plus
- Section 40 payments paid by the Workers Compensation Insurer via NSWPF payroll capped at the Award rate for the first 26 weeks and the statutory rate after the first 26 weeks applicable to the individual officer but not exceeding an officers average weekly earnings

Section 40 is aimed at compensating the difference between:

The weekly amount which the worker would probably have been earning as a worker but for the injury and had the worker continued to be employed in the same or some comparable employment, and

the average weekly amount that the worker is earning, or would be able to earn in some suitable employment, from time to time after the injury.

If the amount of wages and workers compensation payments are less than 75% of pre disability income, income protection payments may be applicable. Contact First State Super for further details regarding this policy, refer to the Product disclosure statement on their website www.firststatesuper.com.au

4. Other Benefits You Can Claim Under Workers Compensation

Medical Treatment

You have the right to choose your own treating doctors. Your treating doctor will provide treatment or refer you to another treatment provider such as a specialist doctor or physiotherapist etc. To ensure their costs are covered, treatment providers should contact the Insurer before treating you to provide a treatment plan as required by the Insurer. If you have paid for treatment, forward receipts to the Insurer who will reimburse the cost if the treatment is necessary for your injury ²⁵. You are entitled to claim the cost of reasonably necessary treatment that results from the injury such as medication and treatment including physiotherapy and surgery. There are some statutory limits placed upon the amount of treatment and other costs payable to an injured worker ²⁶. If you receive notice that your benefits are being ceased due to exceeded statutory limits, you should contact the Police Association or a legal advisor for further information relating to appealing the decision.

Normally, injured workers should not have to pay or be expected to pay for treatment. Check with the Insurer before signing any agreement with a treatment or service provider. Expenses incurred as a result of these agreements may not be covered

by the Insurer and you may be responsible for paying them yourself.

If the injured worker has paid for reasonably necessary medical treatment, the insurer is to reimburse the injured worker within 7 days after the worker requests payment. This also applies to travelling expenses that the injured worker has paid for ²⁷.

Domestic and Nursing Assistance

In certain circumstances, **seriously injured** workers may be able to get access to domestic assistance ²⁸ when a medical practitioner has certified that it is reasonably necessary that the assistance be provided and the necessity is a direct result from the work related injury. It can include work such as lawn and garden care, household cleaning and childcare. The type and amount of assistance will be determined by a functional assessment. For temporary assistance, this will be when the worker is recovering from the work-related injury or from intervention such as surgery. For longer-term assistance the assessment will be when the worker is able to be assessed as 15% whole person impairment or in cases of 'without prejudice' decisions, when the worker is likely to exceed three (3) months cumulative assistance. Levels of domestic assistance can be approved by the Insurer and if approved will be re-evaluated at regular intervals. Temporary domestic assistance where 15% WPI has not

²⁵ Section 279 Workplace Injury Management and Workers Compensation Act 1998 states that a claim for medical expenses must be determined within 21 days by the Insurer.

²⁶ s61 (3), s62 (5), s63 (1), s76 (1), s77(1), s64 Workers Compensation Act 1987

²⁷ WorkCover Guidelines for Claiming Compensation Benefits

²⁸ Section 60AA of Workers Compensation Act and Section 376 (1)(c) of the Workplace Injury Management & Workers Compensation Act 1998.

been reached is limited to 6 hours per week for a period of 3 months.

Travel Expenses

Workers can also claim reasonable travel expenses to and from treatment and medical appointments i.e. mileage, train or bus fares ²⁹. At present this rate is at 55 cents per km.

Property Damage

An injured worker may be eligible for compensation for property damage to artificial aids or clothing.

Damage to Artificial Aids

If a worker in a work related accident damages artificial eyes, false teeth, crutches, artificial limbs, other artificial aids or spectacles the worker may be entitled to compensation for the:

- reasonable cost of repair or, if necessary, replacement of the artificial aid
- service costs of qualified persons for consultations, prescriptions and examinations in connection with the repair or replacement of the artificial aid
- the loss of wages associated with attending consultations relating to the artificial aid

Damage to Clothing

A worker in a work related accident may be entitled to compensation for the repair, or if necessary, replacement of clothing damaged in the accident ³⁰.

5. Lump Sum - Section 66 & Section 67

Section 66 of the *Workers Compensation Act* provides for a lump sum payment of compensation if a work-related injury results in the worker suffering **permanent impairment**. The Act provides guidance as to the amount of compensation payable depending on the percentage degree of permanent impairment and the date of the relevant injury. In respect of physical injuries lump sum compensation is payable where you have sustained a permanent impairment of 1% or more. In respect of injuries occurring after 1 January 2007, 1% point would entitle you to compensation of \$1375.

In respect of a physical injury, you will be entitled to receive an additional payment in respect of pain and suffering, once you have sustained a permanent impairment of at least 10%. However, the maximum payable for pain and suffering is \$50,000. In those circumstances, a member who has a whole person impairment of, say, 10% is only likely to recover an additional amount for pain and suffering of between say \$5000 and \$10,000.

The amount payable for pain and suffering will increase depending on the seriousness of the injury and the assessment of permanent impairment.

There is only an entitlement to recover compensation pursuant to Section

²⁹ s64 of the *Workers Compensation Act 1987* outlines the Car Travel Expenses Rate

³⁰ Section 76 & 77 The *Workers Compensation Act 1987*, provides that the maximum amount of compensation, which can be claimed for personal property/effects, damage, as a result of a work place accident.

66 and Section 67 for a psychological injury in the event that a worker has suffered a permanent impairment of at least 15%. In the event, there will also be an entitlement to recover compensation for pain and suffering pursuant to Section 67. However, there is no entitlement to compensation for psychological injury prior to 1 January 2002. The effect of the transitional provisions is that a worker whose psychological injury arises from exposure to traumatic events, both prior and subsequent to 1 January 2002, will have a deduction made from the compensation payable pursuant to Section 66 and Section 67 in respect of that proportion of their condition which is said to relate to exposure to incidents prior to 1 January 2002.

Members should always seek advice before pursuing a Section 66 compensation claim as it may have an impact on their ability to remain fully operational in the long term.

How to make a Claim for Section 66 & 67

You will require specialist medical reports which outline the percentage of loss claimed. Often it may take some time for an injury to stabilise to a point where a medical opinion as to permanent percentage loss can be made.

It is important that you seek advice from a legal advisor as to what type of report is suitable before proceeding

with the claim. The services of a Solicitor are recommended. Referral can be made through the Association office.

6. Victims Compensation

If you believe that you have an entitlement to pursue a claim before the Victims Compensation Tribunal, you should be aware that the claim is required to be lodged within 2 years of the date of injury. You are also required to pursue your workers compensation entitlements, including your entitlement to lump sum compensation pursuant to Section 66 and Section 67, before the Victims Compensation Tribunal will determine any entitlement to victims compensation. If, in fact, you receive an award of victims compensation, you will be required to repay any compensation received pursuant to Section 66 and Section 67 of the Workers Compensation Act.

If you receive an award of damages, you may be required to repay out the award of damages to the workers compensation insurer, which will include all of the payments received pursuant to the Workers Compensation Act including lump sum compensation pursuant to Section 66 and Section 67. If your award of damages is as a result of a claim for work injury damages you will not be required to repay the Section 66/67 compensation.

Advice should always be obtained from a solicitor regarding these claims.

7. Work Injury Damages (Also known as a Common Law Claim)

A work injury damages claim is a claim where you allege breach of duty of care on behalf of your employer, the NSW Police Force. A claim for breach of duty of care is only available where you have sustained permanent impairment of at least 15% and where you have received payment of your lump sum compensation pursuant to Section 66 and Section 67.

You must be able to demonstrate breach of duty of care on behalf of your employer and you must be able to show that that breach was causative of your injury. A claim for work injury damages, should be brought within 3 years of the date of injury. However, where your injury arises by reason of cumulative exposure to traumatic events during your service with the NSW Police Force, it may be argued that the 3 years runs from the date on which you cease work (not the date of your medical discharge, but the date you last worked).

A claim for work injury damages is limited to your economic loss. That is, you are only able to bring a claim in respect of your net wages loss and associated loss of superannuation benefits.

Payment of an award of damages for breach of duty of care, will have the effect of extinguishing your workers compensation entitlements, including

your entitlement to have the workers compensation insurer meet your treatment expenses, notwithstanding the fact you are unable to make a claims for those future expenses.

Where you have a solicitor act for you in respect of a claim for compensation pursuant to Section 66 and Section 67, we recommend you obtain advice of that solicitor if you are interested in pursuing a claim for work injury damages.

Funding

The Association's Financial Legal Assistance Scheme does not provide financial assistance for claims for breach of duty of care. In respect of workers compensation claims, legal costs are payable by the workers compensation Insurer in the event that your claim is successful. If the claim does not succeed, your solicitor will not be paid. Your solicitor is not entitled to ask you to pay any professional costs in respect of any claim for benefits pursuant to the Workers Compensation Act. The Association's panel of solicitors are well equipped to deal with police related matters, referral to the panel solicitors can be facilitated through your Association.

Your solicitor may ask you to fund disbursements, such as medical report fees. However, certain disbursements may be recovered in accordance with a scale, from the workers compensation insurer in the event that your claim is successful.

You will be liable for payment of professional fees and disbursements if you wish to pursue a claim for work injury damages. We suggest that you seek the advice from your solicitor if you are interested in pursuing a claim for damages.

8. Other Benefits

Depending on the individual claim and the type, nature and severity of the injury, an injured worker may be eligible for some of the following payments/entitlements:

- Ambulance service
- Hospital treatment
- When the injury results in the death of a worker, the dependent family members may be eligible for death and/or funeral expenses.

Commutation

A commutation is an injured worker's entitlement to Workers Compensation benefits paid out as a lump sum of money.

Commutations are only available in the following circumstances:

- Where you have sustained a whole person impairment of at least 15%
- Where the injury occurred at least 2 years ago
- Where you have received weekly payments of compensation consecutively for the last 6 months
- Where you have exhausted

all opportunities for injury management and return to work

Commutations are required to be approved by WorkCover and it is, generally, very difficult to satisfy WorkCover that all opportunities for injury management and return to work have been exhausted.

We advise that a commutation will extinguish your ongoing workers compensation entitlements. You should seek the advice of a solicitor if you are considering pursuing a commutation.

9. Secondary Employment Whilst on Workers Compensation

As per the NSW Police Force Secondary Employment Policy secondary employment can be applied for during periods of rehabilitation. In cases where an officer may be unfit to work in NSW Police Force but they may be fit to work outside of NSWPF, medical evidence should be obtained and provided to the Injury Management Advisor for the region to assist with the development of an external RTW Plan. These types of RTW Plans can be aimed at returning an officer to NSWPF and assisting with returning them back to a workplace or it can be a plan to assist with rehabilitation to an external organisation.

Officers participating in this type of arrangement need to advise the Insurer of the wages being earned in

the second job which will then affect their workers compensation payments that are being received. If there is a difference between new wages being earned and the wages that were earned in NSWPF before the injury, Workers Compensation payments may then be paid but will be capped at the statutory rate.

Income Protection payments will also be affected by income earned through secondary employment.

10. When A Dispute Arises in Relation to Return to Work & Suitable Duties

If there is a dispute between you, the insurer and your employer about your return to work and whether the hours or duties proposed are suitable, it is advised that you seek assistance from the Association who can assist with the return to work process. There is also a capacity for disputes surrounding suitable duties to be dealt with via the Workers Compensation Commission initially through conciliation. These disputes are treated expeditiously by the Workers Compensation Commission. If you require advice regarding this type of matter, contact should be made with the Association office for further assistance. Advice can then be obtained through the Associations solicitors if required.

11. Benefits if You Are Fit for Suitable Duties/Work and Are in the Process of Job Seeking or Retraining

If you are fit for work but cannot find work ³¹, Section 38 of the Workers Compensation Act provides for:

- Not more than the Award rate of pay within the first 26 weeks of incapacity; and
- Not more than 80% of the Award rate between 27 and 52 weeks of incapacity.

Section 38 payments stop after a maximum of 52 weekly payments ³². If you are still unemployed or not undertaking work after 52 weeks of Section 38 payments, statutory rate provisions may be paid.

These payments are also applicable if you exit NSW Police Force and are undertaking a retraining program, job seeking or rehabilitating.

12. How Long will the Insurer Continue to Pay Workers Compensation Benefits

There is no set timeframe for benefits under Workers Compensation to continue. Workers Compensation benefits are payable until 12 months past the date on which you would be eligible to receive the age pension, but this will depend on ongoing medical evidence in relation to your

³¹ Section 38A Workers Compensation Act 1987 determines whether a worker is seeking suitable employment

³² Section 38 Workers Compensation Act 1987

³³ Section 52 Workers Compensation Act 1987

capacity to work³³. Weekly payments of compensation in respect of partial incapacity for work are not payable for any period beyond the first 104 weeks of partial incapacity for work (whether or not any part of that period is compensated as if the incapacity for work was total), but only if one or more of the following paragraphs (referred to in this section as **grounds for discontinuation**) applies to the worker at the **relevant time**³⁴:

- The worker is not suitably employed (within the meaning of Section 43A) and is not seeking suitable employment (as determined in accordance with Section 38A);
- The worker is not suitably employed (within the meaning of Section 43A) and has previously unreasonably rejected suitable employment (within the meaning of Section 40 (2B));
- The worker has sought suitable employment, but has failed to obtain suitable employment primarily because of the state of the labour market (rather than because of the effects of the worker's injury).

13. How the Insurer Determines if You Are Employed in a Comparable Job & What Your Capacity to Work is

This may involve the injured worker being independently assessed by EML

or having a Section 40A assessment conducted³⁵. An injured worker who is partially incapacitated for work may be required by the Insurer to undergo a vocational assessment which looks at the worker's ability to earn in some suitable employment. If the Insurer determines that an injured worker has the capacity to earn a certain amount, then any ongoing weekly benefits will be based and determined on that figure. This is particularly relevant for injured officers who exit NSW Police Force and are seeking suitable employment outside of NSW Police Force.

Suitable employment³⁶ in relation to a worker means employment in work for which the worker is suited, having regard to the following:

- The nature of the worker's incapacity and pre-injury employment;
- The worker's age, education, skills and work experience;
- The worker's place of residence;
- The details given in the medical certificate supplied by the worker;
- The provisions of any injury management plan for the worker;
- Any suitable employment for which the worker has received rehabilitation training;
- The length of time the worker has been seeking suitable employment;
- Any other relevant circumstances.

³⁴ Section 52A Workers Compensation Act 1987

³⁵ Section 40A Workers Compensation Act 1987

³⁶ Section 43A Workers Compensation Act 1987

14. Assessments You May be Required to Attend for the Insurer

Injury management consultants (IMC)

An injury management consultant is a registered medical practitioner experienced in occupational injury and workplace-based rehabilitation. Injury management consultants are facilitators who will assist insurers, employers, workers and treating doctors **find solutions to the problems in complex return to work plans and injury management.** Injury management consultants are not involved in the treatment of an injured worker, nor do they provide any opinion on the current treatment regime to the referrer. They assess the nature of the problem and attempt to mediate a solution through discussions with the nominated treating doctor.

The role of the injury management consultant is distinctly different from that of the independent medical examiner. An injury management consultant is expected to assess the situation, examine the worker (if necessary) and discuss possible solutions with all parties (particularly the nominated treating doctor).

Independent consultants

Independent consultants provide independent peer review of physical and psychological treatment. They

liaise with the treating practitioner to determine whether further treatment is considered reasonably necessary. This may involve an assessment of the injured worker by the consultant.

Injured workers may be referred to an independent consultant when the insurer is concerned about the:

- number of treatments provided and/or proposed
- failure of the injured worker to return to work despite ongoing treatment.

Independent medical examiner (IME)

The injured worker, worker's solicitor or the insurer can request an independent medical examination. A referral for an independent medical examination occurs when medical information is:

- inadequate
- unavailable
- inconsistent
- or where the referrer has been unable to resolve the issues related to the problem directly with the parties involved.

Independent medical examiners don't provide advice to injured workers about their condition, treatment or workers compensation claim. The independent medical examiner's report may include advice on accepting a claim, insurer's ongoing

liability and the worker's level of fitness for work and ongoing treatment. If they consider some other type of treatment might assist the worker, they will mention it in their report and may contact the worker's treating doctor to discuss treatment options. The independent medical examiner report is forwarded to the person who requested it.

Assessors of permanent impairment

When an injured worker submits a claim for permanent impairment (Section 66/67 claim) they will be required to be assessed by an assessor of permanent impairment. Assessors may be one of the injured worker's treating specialists or engaged on behalf of the employer or insurer for the purposes of assessing the level of permanent impairment.

NSW Police Force may have access to some of these reports obtained by the Insurer particularly as they relate to return to work, suitable duties, fitness for work and or possible medical discharge recommendations. If you are unsure how this impacts on your employment with NSW Police Force advice should be obtained from the Association. If you wish to access a copy of a medical report obtained by the Insurer, a request should be made to the Insurer via your case officer in writing requesting a copy.

15. What Happens When You Cannot Return to your Pre Injury Job with NSW Police Force: Assistance Available Under Workers Compensation

Vocational rehabilitation programs

Vocational rehabilitation programs help injured workers return to work. The programs can be tailored to suit a worker's particular needs by adopting the full program or elements from the programs listed below.

JobCover placement program

The JobCover placement program provides an employer with incentives to employ an injured worker.

The benefits of this program include:

- a wage subsidy for up to 12 months
- excluding the injured workers wages from the employer's workers compensation premium calculation for up to two years
- protection against further costs associated with the existing injury for up to two years.

Equipment and workplace modifications

Special **equipment and workplace modifications** required to help an injured worker achieve a safe and

durable return to work may be covered under this program.

Retraining programs

Retraining programs assist injured workers to develop new skills and qualifications to keep their job or get a new job. This may involve formal study with TAFE, a university or registered training organisation. Course fees and associated costs such as stationery, textbooks, travel and accommodation may be covered under this program.

Transition to work program

The **transition to work program** can provide up to \$5000 to address immediate or short-term costs (such as travel, transitional child care arrangements, relocation, clothing and the like) that may prevent an injured worker from accepting employment. The payment can be used more than once provided the cumulative costs do not exceed \$5000.

Work trials

Work trials can be used to place a worker with a host employer for a short time if the worker's employer is unable to provide suitable duties. The work trial provides the worker with an opportunity to develop new skills and enhance their physical and psychological capacity for work. The host employer does not pay the workers wages as payments continue through the workers compensation system.

PART C:

Contacts

Police Association of NSW
(02) 9265 6777 or en 57071
www.pansw.org.au

WorkCover
131050
Mon – Fri: 8.30 – 5pm
www.workcover.nsw.gov.au

Employers Mutual Limited
1800 469 931 or (02) 8251 9000
(Mon – Fri: 8.30 – 5.00pm.)
www.employersmutual.com.au

NSW Police Force Injury Hotline
1800 996 336

**Injury Management Advisors
for each NSW Police region**

First State Super
1300 650 873
www.firststatesuper.com.au

State Authorities Superannuation
1300 130 095
www.statesuper.nsw.gov.au

**Employee Assistance Program
(24hr confidential counseling service)**
1300 667 197

**NSW Police Force
Psychology Section**
(02) 9285 3434

C.A.R.E.

Career and Resilience Education Program



www.pansw.org.au



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