



Frequently Asked Questions About Your Lump Sum Claim For Workplace Injury

If you've suffered an injury and lodged a workers compensation claim in South Australia that has been accepted, you may also have an entitlement to claim lump sum compensation for permanent impairment. These claims are made under sections 56 and / or 58 of the *Return to Work Act 2014* ("the Act"), and can compensate an injured worker for non-economic loss (sometimes referred to pain and suffering or loss of enjoyment of life) and / or future loss of earning capacity.

In today's blog, we've compiled a number of frequently asked questions by workers compensation clients we've seen over recent years.

Is there a time limit for making a claim for a lump sum payment?

There is no time limit for making a claim pursuant to Section 56 or 58. As long as your injury has reached “maximum medical improvement” you can make the claim at any time. This is the case even if the two year period for receiving weekly payments has ended.

Will a lump sum affect my entitlement to workers compensation weekly payments or compensation for medical expenses?

A lump sum payment for non-economic loss is intended to compensate an injured worker for the “human” or “quality of life” aspects of their injury. This entitlement is in addition to any other type of compensation available under the Act.

Although a lump sum payment for future loss of earning capacity is, effectively, for anticipated financial loss, you will only be entitled to claim this lump sum payment if your permanent impairment is 29% or less, which means that your workers compensation weekly payments will end after a maximum of two years. (If your permanent impairment is 30% or greater you will be classified as a “seriously injured worker” in which case your workers compensation weekly payments will continue until retirement age and you will not be entitled to a lump sum payment for future loss of earning capacity). Accordingly, neither of the lump sum payments you may be entitled to will affect your entitlement to receive weekly payments or payment of medical expenses.

How do I know if I have reached “maximum medical improvement”?

Ask your doctor. If you are still getting workers compensation medical certificates regularly, when you next see your doctor ask him or her whether, in their view you have reached “maximum medical improvement”.

If they think you have, ask them to note this on your certificate.

If you are no longer getting regular workers compensation certificates, arrange to see the doctor who treated you in relation to your work injury and ask him/her if they are able to say whether you have reached “maximum medical improvement”.

If they are unable to do so, you may need to ask the workers compensation insurer to arrange for you to be assessed by an accredited assessor to secure an assessment of whether you have reached

“maximum medical improvement”.

Alternatively, speak to one of the solicitors in the Andersons workers compensation team who can assist by arranging for you to see a suitable medical expert who can provide an opinion in this regard.

How do I go about making a claim for lump sum compensation under Section 56 and / or 58?

Once your doctor confirms that you have reached “maximum medical improvement” you will need to advise your workers compensation insurer (preferably in writing) that you wish to proceed with claims for lump sum compensation pursuant to Section 56 and / or 8 of the Act. We recommend that you seek assistance from a suitably qualified lawyer to act on your behalf in relation to this.

The insurer might ask you (or your lawyer) to provide evidence that you have reached “maximum medical improvement”.

If your doctor has stated on a workers compensation certificate that you have reached “maximum medical improvement” you should give this certificate to the insurer. If your doctor has just told you verbally, it may be necessary for the insurer to ask that doctor to provide a medical report. Alternatively, your lawyer can get a medical report from your doctor.

Once the insurer is satisfied that you have reached “maximum medical improvement”, they should send you (or your lawyer) a list of accredited doctors and ask you to choose which doctor/s you wish to assess you. If your work injury has led to a number of different conditions affecting different body parts, it might be necessary to be assessed by a number of different doctors who have specific expertise with each body part or condition.

You have the right to choose the assessing doctor from the list provided. It is an important right and you should not give it up.

Do not tell the insurer that you don’t care who assesses you. Do not allow the insurer or your employer to choose the doctor who assesses you or to pressure you to choose a particular doctor. If you allow them to choose the assessor, they may choose a doctor who they believe will give a more conservative assessment. If you need help choosing the appropriate doctor, you can contact one of the workers compensation lawyers in the Andersons team for assistance.

Once you’ve selected the assessing doctor/s, the workers compensation insurer should arrange an appointment with the selected doctor. During this appointment the assessing doctor should examine you and ask you questions about your symptoms and condition.

The doctor will probably ask you to describe ways in which your injury has affected your ability to live a normal life or undertake all of the activities you undertook before your injury. Before you attend the assessment, we recommend that you give some thought to this and perhaps even make some notes. For example, are you able to garden, or play sport, or do the housework, or attend to personal grooming as easily as you used to?

Many people attempt to be stoic when they have suffered an injury, and to spend more time thinking about what they CAN do instead of what they CAN'T do. While we think it is important to have a positive attitude, an assessment of permanent impairment is one time when you should NOT try to downplay or minimise or de-emphasise the effects of your injury and the impact your injury has on your life. You should tell the assessing doctor the full extent of the ways in which the injury has impacted your life and reduced your ability to live your life as you did before you were injured.

After the assessment, the doctor will send a report to the workers compensation insurer who is required to provide a copy to you or your lawyer.

If the doctor concludes that you have suffered a permanent impairment of at least 5% whole person impairment, the workers compensation insurer should issue a decision outlining your entitlement to a lump sum payment.

Do I need a lawyer to make a lump sum claim for my workplace injury?

Strictly speaking you do not need a lawyer to make a claim for lump sum compensation however this is not our recommendation. It is not uncommon to encounter difficulties during the various stages of making a claim.

Many people find that it is preferable to have a lawyer during the process simply because they find the process of making, and progressing a claim confusing and intimidating and they would prefer to put their energy into getting better.

Experienced and specialised legal representation will ensure that your claim encompasses all potential body parts and conditions, and might maximise the compensation you ultimately receive. Furthermore, being legally represented can provide you with comfort in knowing that, if any problems or issues arise, they will be dealt with promptly and professionally.

Andersons has a team of workers compensation lawyers who are highly experienced and effective advocates. If you have any questions about your workers compensation claim please do not hesitate to contact Andersons Solicitors.

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