



WorkCover eligibility for people who work past retirement age

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Many people assume that once they reach retirement age, they are not able to lodge a WorkCover claim if injured at work or that their rights and entitlements under the WorkCover legislation automatically stop. This is not correct. In Victoria, you still have an entitlement to WorkCover benefits past retirement age.

This blog explores:

- how retirement affects WorkCover entitlements in Victoria;
- what exceptions apply;
- whether ongoing medical and like expenses continue;
- what benefits remain available past retirement age; and
- when you should seek legal advice.

What is classified as retirement age?

The retirement age, in relation to a worker, means the age at which the worker attains pension age within the meaning of the *Social Security Act 1991* (Commonwealth legislation). For clarity, this is different to how access to your superannuation is calculated.

Retirement age for the purposes of a WorkCover claim is connected to your date of birth, as per the table below.

Date of birth	Retirement age applied
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Before 1 July 1952	65 years
1 July 1952 – 31 December 1953	65 years & 6 months
1 January 1954 – 30 June 1955	66 years
1 July 1955 – 31 December 1956	66 years & 6 months
From 1 January 1957	67 years

Medical and like expenses after retirement age

If you are injured at work before or after retirement age, you are entitled to reasonable medical and like expenses.

To receive payments, treatment needs to be:

- reasonable and necessary; and
- related to the accepted work injury.

If treatment meets these criteria, the insurer will continue to reimburse medical and like expenses, even if weekly payments have ceased because of retirement age. These costs include:

- doctors' consultations;
- hospital and surgical costs;
- physiotherapy and rehabilitation;
- travel costs for treatment;

Weekly payments after reaching retirement age

The purpose of [weekly payments](#) is to replace lost earnings if you are unable to work due to a work-related injury. In Victoria, WorkCover legislation has specific rules that determine how long these payments will continue.

Section 169 of the WorkCover legislation states;

If a worker is injured within 130 weeks (2.5 years) before retirement age or after attaining retirement age, the worker is entitled to weekly payments for not more than the first 130 weeks of incapacity for work.

Entitlements to weekly payments cease when you reach retirement age, unless you are:

- injured within 130 weeks (or 2.5 years) before retirement age; or

- injured after retirement age.

Therefore, if you are injured within 130 weeks (around 2.5 years) before reaching retirement age, you can continue receiving weekly payments for up to 130 weeks, even if this is past retirement age.

Further, if you are injured after reaching retirement age, you will still have an entitlement to weekly payments for up to 130 weeks.

However, if you were injured more than 130 weeks before retirement age, weekly payments generally stop in the following circumstances:

- You have received weekly payments for 130 weeks, and you have a work capacity or have a whole person impairment of less than 21%;
- You are continuing to receive weekly payments post 130 weeks, weekly payments will stop at retirement age.

There is a limited and specific exception in the Act that applies where a worker has become incapacitated before reaching retirement age and continued working. If, after retirement age, they then require an inpatient hospital stay for treatment related to the injury, weekly payments can be paid for a maximum of 13 weeks whilst receiving treatment in hospital and recovering. To receive weekly payments in these circumstances, a written request needs to be made to the insurer.

Lump sum compensation for permanent impairment

No fault impairment benefits

If your work injury has resulted in a permanent injury, you may be eligible for a lump sum compensation in the form of an impairment benefit even after you reach retirement age. These benefits are assessed based on the degree (percentage) of impairment rather than your age.

These claims are generally lodged 18 months following an injury and when the injury is stable. For your injuries to be considered stable, they need to be unlikely to markedly improve or decline. Crucially, retirement age does not reduce or exclude your entitlement to an impairment benefit.

For more information, please see our earlier blog [“WorkCover lump sum compensation for permanent impairment”](#).

Common law claims

If you have sustained a work injury that becomes permanent and stable, and the injury occurred in negligence circumstances, you may be able to pursue a common law claim for pain and suffering and economic loss damages. A common law claim is made in addition to [no-fault entitlements under the Victorian WorkCover Scheme](#).

To be eligible for common law compensation, you must prove the following:

- That your injury is a serious injury;
- The employer or third party was negligent in causing this injury; and
- It is this negligence that caused your injury.

While retirement age does not prevent a common law claim, claims for economic loss can be more complex once a worker has reached or is close to retirement age. This is because future economic loss must usually be supported by evidence that the worker intended and was able to continue working beyond retirement age.

For more information, please see our earlier blog [“WorkCover common law claims and serious injury applications”](#).

In summary

WorkCover claims near retirement age can be complex. You should consider legal advice if:

- your weekly payments are stopped unexpectedly;
- you are told you do not qualify because of age alone;
- you are approaching or have reached 130 weeks of weekly payments;
- there is disagreement about your impairment rating or work capacity.

Reaching retirement age does not automatically end all WorkCover entitlements in Victoria. While weekly payments are limited, there are important exceptions, and other benefits such as medical expenses, lump sum compensation due to permanent impairment and common law claims may still be available.

Get help from a WorkCover lawyer

If you have been injured at work, the most important action you can take is to act fast. At Guardian Injury Law, we are experienced at navigating WorkCover claims in Victoria.

To ensure you receive all the entitlements you're eligible for and to protect your rights, seek advice as soon as possible. We offer free initial advice and run claims on a “no win, no fee” basis, so there's no cost to find out where you stand.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

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This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.