

**FREQUENTLY
ASKED QUESTIONS**



**WA POLICE FORCE
COMPENSATION
SCHEME**



1 BACKGROUND TO THE POLICE COMPENSATION SCHEME

Legislative background

The Police Amendment (Compensation Scheme) Bill 2021 was passed by Parliament on 8 December 2021, and commenced on 1 January 2022. This amends the *Police Act 1892 (WA)* (the Police Act) and introduces the Police Compensation Scheme for police officers and Aboriginal police liaison officers who are medically retired due to work-related illness or injury. The practical application of the amendments is supported with the introduction of the *Police (Compensation Scheme) Regulations 2021*.

What is the Police Compensation Scheme?

The Police Compensation Scheme provides for a compensation payment for police officers and Aboriginal police liaison officers who have been medically retired due to a work-related injury or illness. The scheme is specifically tailored to ensure there is no reduction to existing in-service and post-service entitlements, including the Former Police Officers' Medical Benefits Scheme.

Who is eligible?

Police officers and Aboriginal police liaison officers who are medically retired from 1 January 2022 under section 33ZE of the Police Act due to work-related illness or injury are eligible for the Police Compensation Scheme.

Relevantly, the Police Act states:

medically retired member means a former member who ceased to hold office as a member because they were retired on medical grounds under Part IIC. **member** means —

- (a) a commissioned officer; or
- (b) a non-commissioned officer; or
- (c) a constable; or
- (d) an Aboriginal police liaison officer.

Who is not eligible?

Police officers and Aboriginal police liaison officers who are medically retired due to a non-work-related illness or injury are ineligible for the Police Compensation Scheme.

Also, civilian employees and police auxiliary officers of the Western Australia Police Force and other State Government employees are ineligible to apply for the Police Compensation Scheme.

Is the Police Compensation Scheme retrospective?

No. The scheme only applies to eligible members medically retired after 1 January 2022.

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Where does the Police Compensation Scheme fit within the State Government's support of ill and/or injured members?

The Police Compensation Scheme is part of a suite of initiatives delivered by the State Government to support medically retired officers which include:

1. The WA Medically Retired Police Redress Scheme. A once-off \$16 million redress scheme with payments of up to \$150,000 to acknowledge the circumstances and treatment of some former medically retired officers. The Redress Scheme opened for applications between 13 December 2018 to 8 April 2019 and is now closed.
2. Reforms to the Police Act to ensure a separate and more dignified process for medical retirement.
3. Introduction of the Police Compensation Scheme.

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MEDICAL RETIREMENT

What is medical retirement?

Medical retirement is instigated by the agency as a last resort when it is evident from a medical assessment that an eligible member can no longer perform their duties.

Medical retirement is not initiated by an employee.

The medical retirement process is contained within the Police Act.

How does medical retirement happen?

Prior to medical retirement, the WA Police Force has in place a multi-faceted injury management model which endeavours to explore all avenues to retain a member which includes:

- Early intervention.
- A bio-psycho-social focus to building capacity through work participation.
- Empowering the employee and business area to have the member return to work.
- Rehabilitation that is based in the workplace and driven by outcomes.
- An evidence-based approach to service design and delivery.
- Services that result in measurable benefits to the member and agency.

If following these approaches, the WA Police Force is unable to accommodate a member's medical restrictions, the agency may instigate the medical retirement process.

The decision to medically retire a member is informed by medical advice and relies upon an assessment by the Police Medical Board.

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Who approves a medical retirement?

If the member is a **commissioned officer**, the Police Commissioner may recommend, via the Minister for Police, that the Governor retire the member on medical grounds.

If the member is a **non-commissioned officer**, the Police Commissioner may, with the approval of the Minister for Police, retire the member on medical grounds.

If the member is an **Aboriginal police liaison officer**, the Police Commissioner may retire the member on medical grounds.

3 POLICE COMPENSATION SCHEME

How are Police Compensation Scheme payments set?

The compensation aligns with the *Workers' Compensation and Injury Management Act 1981*, which has set the prescribed amount in section 5A(1A) for the financial year commencing 1 July 2022 at a total of \$243,991.

The amount is indexed yearly¹ and is capped at the indexed amount.

The scheme is made up of different components, detailed as follows:

- (a) a compensation payment capped at \$243,991 consistent with the *Workers' Compensation and Injury Management Act 1981* which comprises of the combined total of:
 - (i) a permanent impairment payment (scaled by impairment as per the *Workers' Compensation and Injury Management Act 1981*); and
 - (ii) a lump-sum payment for salary continuance, up to a maximum of 12 months of the officer's pre-retirement salary;
- (b) a lump-sum payment of \$17,079 for vocational support and re-training²; and
- (c) maintenance of current entitlements.

An officer may also access an additional payment of up to 75% of the prescribed amount where an officer suffers permanent total incapacity and their social and financial circumstances justify it.

What is permanent impairment and how is it calculated?

For the purposes of the Police Compensation Scheme, 'impairment' refers to the work-related injury or illness for which the member was medically retired.

¹ For yearly adjustments refer <https://www.workcover.wa.gov.au/resources/rates-fees-payments/#indexation>

² This payment is provided to the medically retired member for costs associated with equipping the medically retired member for future employment in a non-Police Officer role. The quantum of this payment is provided for in the *Workers' Compensation and Injury Management Act 1981*.



The degree of permanent impairment is measured according to the same scale used by the *Workers' Compensation and Injury Management Act 1981*, for which specific body parts and/or faculties are assessed. Each body part or faculty attracts a percentage of the prescribed amount, depending on the severity of the impairment.

If a medically retired member is assessed for more than one impairment, each percentage is determined separately. However, the overall payment for this compensation cannot exceed the prescribed amount.

The overall degree of permanent impairment is determined by an approved medical specialist and communicated to the Police Commissioner.

Who is an Approved Medical Specialist?

Approved medical specialists are specialists who are designated under section 146F of the *Workers' Compensation and Injury Management Act 1981* and whom the Police Commissioner has appointed to carry out permanent impairment assessments.

The list of approved medical specialists is published on the WA Police Force website and a member may choose the approved medical specialist who will undertake their assessment.

The *Workers' Compensation and Injury Management Act 1981*, as well as the *WA WorkCover Guides*, provide directions for evaluating the degree of permanent impairment.

Compensation payable for permanent impairment

Each permanent impairment assessment will depend on the particular circumstances of the individual medically retiring member and the degree of their impairment, as assessed by an approved medical specialist.

The scale used for which specific body part/s and/or faculties are to be assessed provides for a variety of percentages of impairment against the maximum prescribed amount.

For the above reasons, specific examples cannot be provided, however below are examples of how the compensation is calculated.

Example 1

In applying a 10% degree of impairment (determined by the approved medical specialist) of an impairment that may attract 100% of the maximum prescribed amount, the impairment is calculated as:

$$\$243,991 \times 10\% = \$24,399$$

To this figure is added the medically retired member's annual salary up to the prescribed amount.

In addition, the member is entitled to receive the vocational rehabilitation payment of \$17,079.

Therefore, the total payment in this example is \$145,087.



Example 2

In applying a 60% degree of impairment (determined by the approved medical specialist) of an impairment that may attract a maximum of 100% of the maximum prescribed amount, the impairment is calculated as:

$$\$243,991 \times 60\% = \$146,385$$

To this figure is added the medically retired member's annual salary up to the prescribed amount.

In this example their annual salary is \$103,609 providing an amount of \$250,000. As this amount is over the prescribed amount of \$243,991, the compensation payable is \$243,991.

In addition, the member is entitled to receive the vocational rehabilitation payment of \$17,079.

The total payment in this example is \$261,070.

What is a permanent total incapacity payment?

An additional amount of up to 75% of the prescribed amount may be payable where a medically retired member suffers permanent total incapacity for work and their social and financial circumstances justify it.

What is the process for permanent total incapacity claims?

Medically retired members who believe that they are unable to undertake any other further employment at all may make an application for a determination of permanent total incapacity and the associated compensation.

Upon receipt of an application for such compensation, the Police Commissioner must appoint an 'assessor' who is a suitably qualified legal practitioner. The assessor is not subject to control or management by the Police Commissioner, which ensures objectivity.

The assessor must first determine whether the medically retired member qualifies for this type of compensation.



If the medically retired member does qualify for the additional compensation, the assessor then determines the quantum to which they are entitled.

This is done by assessing the medically retired member's social and financial circumstances, and their reasonable financial needs.

The maximum amount payable for this compensation is 75% of the member's prescribed amount. This aligns with the *Workers' Compensation and Injury Management Act 1981*, where a maximum payment of \$182,993 can potentially be made (correct to 30 June 2022 - indexed annually).

A medically retired member may only apply once for this type of compensation.

4 APPEALS – MEDICAL RETIREMENT & POLICE COMPENSATION

Can the medical retirement determination be disputed?

Yes.

The dispute provisions in the Police Act for medical retirement remain unchanged with the introduction of the new Police Compensation Scheme legislation. The retiring member has 28 days to lodge their appeal to the Western Australian Industrial Relations Commission.

Can police compensation outcomes or determinations be disputed?

Under the Police Compensation Scheme, a medically retired member may dispute:

- The outcome of any assessment of the degree of permanent impairment;
- A determination that they do not qualify for permanent total incapacity compensation; and/or
- The permanent total incapacity compensation payment amount.

How are police compensation disputes managed?

Disputes are dealt with by the Police Compensation Tribunal. A single Commissioner of the Western Australian Industrial Relations Commission operates as the Police Compensation Tribunal.

In most cases, the dispute must be lodged within 28 days of the medically retired member receiving notice from the Police Commissioner of the outcome of an assessment or determination (this time frame may be extended at the Police Compensation Tribunal's discretion).

The Police Compensation Tribunal can engage in conciliation or arbitration and make determinations in line with section 33ZZH(7) of the Police Act.

If the medically retired member or the Police Commissioner dispute the outcome of the Police Compensation Tribunal, an appeal can be made to the Full Bench of the Industrial Relations Court, including on the grounds that the Tribunal exceeds the authority or power conferred upon the tribunal or a decision that was lawfully incorrect.

Medically retired members may still pursue civil or common law action through the courts.

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Can I be represented in the compensation dispute process?

In dispute proceedings, a medically retired member may be represented:

- personally;
- an agent;
- by a legal practitioner;
- by a person who lodges the dispute on their behalf because they are incapable of doing so themselves; and/or
- by any person purposefully prescribed in regulations made under the *Industrial Relations Act 1979* or considered appropriate by the Police Compensation Tribunal.

Additionally, a medically retired member or their representative may use an interpreter or other suitable person to help them understand or communicate in the proceedings. These provisions aim to support and safeguard vulnerable individuals.

Does payment for compensation prohibit me from taking other courses of action such as ex gratia payments or an Act of Grace payment?

No.

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GENERAL INFORMATION

What is the process for compensation?

Once approved for medical retirement, the member will be informed of the Police Compensation Scheme and their eligibility. The member is required to make a 'request' for a permanent impairment assessment. The approved forms required to submit a request, and the subsequent impairment evaluation and certificate of impairment can be found on the WA Police Force, Family Support page – which is located at <https://www.familysupport.police.wa.gov.au/Leaving-WA-Police/Police-Compensation-Scheme> Payment of compensation cannot be made until after the member has been medically retired.

The Police Compensation Scheme provides that the Police Commissioner may arrange for the medical assessment of the degree of permanent impairment of an eligible member during the medical retirement process.

When will I receive payment for compensation?

The compensation is payable after the retirement process is completed (*and a permanent impairment or permanent total incapacity assessment has been undertaken and accepted by the medically retired member, or after a dispute has been determined*).



The Police Commissioner is to pay compensation no later than 28 days after written notice of acceptance of the assessment is received (*providing the medically retired member has reached their entitlement day*).

If a dispute is lodged, payment is made 28 days after the dispute is determined, and as soon as possible after the medically retired member's entitlement day.

The day at the end of which the medically *retired* member's retirement on medical grounds takes effect under section 33ZE(10)(b) of the Police Act is referred to as their 'retirement day'.

A member is entitled to receive a salary-equivalent maintenance payment for a period of 28 days after their retirement day to cover the period between retirement day and entitlement day.

In accordance with the Police Compensation Scheme, compensation is only payable to a medically retired member once their entitlement day has fallen.

In relation to a medically retired member, 'entitlement day' means -

- (a) the 29th day after the retirement day of the medically retired member; or
- (b) if the medically retired member lodges an appeal under section 33ZI of the Police Act — the day after the day on which the appeal is decided or discontinued (before being decided).

In summary, payment of the compensation cannot be made until after the member has been medically retired and has reached their entitlement day (29 days after retirement day).

This is demonstrated in an example below:

- Retirement Day is 1 June 2022
- Entitlement Day is 30 June 2022 (i.e. 29 days after retirement day)
- Permanent Impairment Assessment accepted 10 June 2022
- Commissioner to pay compensation no later than 28 days after 10 June 2022 (noting that payment cannot be made before 30 June 2022 'entitlement day')

How many times can I apply for compensation for permanent total incapacity?

Once.

Is there a time limit for applying for compensation for permanent total incapacity?

No. An application for consideration of permanent total incapacity can occur at any time after the date of medical retirement. There is no end time limit.

Does the Police Compensation Scheme impact the medical retirement process?

No. The Police Compensation Scheme and the medical retirement process are separate processes.



Will the compensation payment be taxed?

On 22 July 2022 the Australian Taxation Office advised that payments made under the Police Compensation Scheme would not be taxable either as ordinary income or as a capital gain.

Insurance, superannuation and other financial considerations

It is the medically retired member's responsibility to seek expert financial advice regarding their insurance, superannuation and any other financial considerations.

Further, some members may have invested in personal life insurance, which may not be affected by this scheme, therefore members are strongly advised to review their eligibility to claim against such insurance.

Members should also check their entitlements to Centrelink or National Disability Insurance Scheme benefits.

Will medical benefits under the Former Police Officers' Medical Benefits Scheme be affected?

No. The Police Compensation Scheme complements the Former Police Officers' Medical Benefits Scheme.

Post-service eligible officers who were injured at work may continue to claim reasonable medical and pharmaceutical expenses under the *Police (Medical and Other Expenses for Former Officers) Act 2008* provided these have not already been covered by another means of compensation (for example through a motor injury insurance claim).



KEY TERMS

APLO	Aboriginal police liaison officer.
Approved Medical Specialist	<p>Approved medical specialists are specialists who are designated under section 146F of the WC&IM Act and whom the Commissioner of Police has appointed to carry out permanent impairment assessments.</p> <p>The list of approved medical specialists is published on the WA Police website and a member may choose the approved medical specialist who will undertake their assessment.</p> <p>The WC&IM Act, as well as the <i>WA WorkCover Guides</i>, provide directions for evaluating the degree of permanent impairment.</p>
Assessor	A suitably qualified legal practitioner appointed by the Commissioner of Police to assess compensation for permanent total incapacity.
Entitlement day	<p>In relation to a medically retired member, means —</p> <ul style="list-style-type: none">(a) the 29th day after the retirement day of the medically retired member; or(b) if the medically retired member lodges an appeal under section 33ZI of the Police Act — the day after the day on which the appeal is decided or discontinued (before being decided).
IR Act	<i>Industrial Relations Act 1979.</i>
Medically Retired Member	A police officer or APLO of the Western Australia Police Force who has been retired on work-related medical grounds.
Member	A police officer (commissioned officer; non-commissioned officer; constable) or APLO of the Western Australia Police Force.
Police Act	<i>Police Act 1892.</i>



KEY TERMS

Prescribed Amount	The maximum amount payable under section 5A(1A) of the WC&IM Act, this amount is indexed annually.
Redress Scheme	<p>The WA Medically Retired Police Redress Scheme.</p> <p>In 2018, the \$16 million Police Redress Scheme for medically retired officers was announced. The Redress Scheme provided payments of up to \$150,000 to police officers who were medically retired due to a work-related illness or injury. The Redress Scheme was a once-off initiative open for applications between 13 December 2018 to 8 April 2019.</p>
Retirement Day	In relation to a medically retired member, it means the day at the end of which the medically retired member's retirement on medical grounds takes effect under section 33ZE(10)(b) of the Police Act.
The Regulations	<p><i>Police (Compensation Scheme) Regulations 2021.</i></p> <p>Specific legislation to support the practical application of the <i>Police Amendment (Compensation Scheme) Act 2021</i>.</p>
The Police Compensation Scheme	The Police Compensation Scheme set out in the Police Act, as amended by the <i>Police Amendment (Compensation Scheme) Act 2021</i> .
WA Police Force	Western Australia Police Force.
WC&IM Act	<i>Workers' Compensation and Injury Management Act 1981.</i>