



New South Wales

Workers Compensation Legislation Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The *Safety, Return to Work and Support Board Bill 2012* is cognate with this Bill.

Overview of Bill

The object of this Bill is to amend the *Workers Compensation Act 1987* (the *1987 Act*) and the *Workplace Injury Management and Workers Compensation Act 1998* (the *1998 Act*) as follows:

- (a) the scheme for the payment of weekly benefits to injured workers during periods of incapacity for work will be changed, with the following significant changes:
 - (i) the calculation of weekly payments will be based on the worker's pre-injury average weekly earnings rather than on the worker's current weekly wage rate at the time of injury,
 - (ii) the amount of weekly compensation will be calculated as a percentage of pre-injury average weekly earnings (with a maximum compensation amount of \$1,838.70) minus any current earnings or an amount the worker is able to earn in suitable employment,

- (iii) the rate of compensation will vary during 3 entitlement periods (weeks 1–13, weeks 14–130, and after week 130), with weekly payments after week 130 only available to totally incapacitated workers or partially incapacitated workers who have returned to work for at least 15 hours per week,
 - (iv) no weekly compensation will be payable to a worker after 5 years of weekly payments (with an exception for injured workers with more than 20% whole person impairment),
 - (v) a new dispute resolution process for disputes about work capacity decisions will feature internal review by an insurer of its decision with a merit review by WorkCover Authority and a procedural review by the proposed WorkCover Independent Review Officer,
 - (vi) transitional arrangements will continue existing benefits for existing recipients of weekly payments generally until a worker undergoes a work capacity assessment, with immediate application of the amendments to injured workers with more than 30% whole person impairment,
 - (vii) insurers will conduct a work capacity assessment of injured workers to assess capacity for work at various stages throughout the life of the claim,
- (b) payment of an injured worker's expenses for medical, hospital and rehabilitation treatment and services will be limited to treatment and services provided within 12 months after a claim for compensation is first made or within 12 months after weekly payments cease (whichever provides a longer period), with an exception for injured workers with more than 30% whole person impairment,
- (c) an employer's liability for medical and hospital treatment and rehabilitation services provided to an injured worker will be made subject to various preconditions to ensure that any treatment or service is appropriate, properly provided and approved by the insurer, and the WorkCover Guidelines will be able to limit an employer's liability for medical and hospital treatment and rehabilitation services,
- (d) the scheme for lump sum compensation for permanent impairment will be changed as follows:
- (i) lump sum compensation for permanent impairment will no longer include a separate component for pain and suffering,
 - (ii) there will be a minimum impairment threshold of 10% (currently 1%) for lump sum compensation for physical injury,
 - (iii) only one claim for permanent impairment compensation will be able to be made,
 - (iv) an assessment of degree of permanent impairment for a lump sum compensation claim will be binding for the purposes of commutations and common law work injury damages claims,

- (v) workers will be able to waive the requirement to obtain legal advice before agreeing to a lump sum,
- (e) no compensation will be payable for heart attacks, strokes and their underlying diseases unless the nature of the employment concerned gave rise to a significantly greater risk of the worker suffering the injury,
- (f) no compensation will be payable for an injury that is a disease (or the aggravation, acceleration, exacerbation or deterioration of a disease) contracted in the course of employment unless the worker's employment was the main contributing factor,
- (g) no compensation will be payable for journey claims, except for work, workers compensation or training related journeys,
- (h) a claim for common law damages for nervous shock suffered by a relative or dependent of a deceased or injured worker will not be able to be made against the employer unless the nervous shock is itself a work injury,
- (i) the regulations will be able to permit insurers to commute workers compensation liabilities in cases prescribed by the regulations that do not meet the current criteria for commutation,
- (j) the licensing of new workers compensation insurers (including specialised insurers) will be permitted to authorise the entry of new insurers into the workers compensation insurance market (to remove the existing restrictions that limit participation to the Nominal Insurer and current specialised insurers),
- (k) the Nominal Insurer will be authorised to enter into agreements for the transfer to insurers and others of liability for existing and future claims under existing policies of insurance issued by the Nominal Insurer,
- (l) a WorkCover Independent Review Officer will be appointed with functions including dealing with complaints about insurers and reviewing work capacity decisions of insurers,
- (m) new compliance measures will be introduced to ensure compliance by workers and employers with the return to work obligations of injured workers (including creating an offence for a failure by an employer to provide suitable work and authorising WorkCover inspectors to issue improvement notices to employers in relation to non-compliance with their return to work obligations),
- (n) the current restriction on the award of legal costs against a worker in workers compensation proceedings before the Commission (which prevents a costs award except in cases of frivolous or vexatious proceedings) will be replaced by a requirement for costs in proceedings to follow the event,
- (o) savings and transitional provisions provide for the staged implementation of the weekly payments amendments and the transitional arrangements to apply to other amendments, together with savings and transitional regulation-making powers.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation except for savings and transitional provisions, which will commence on the date of assent.

Schedule 1 Amendments relating to weekly payments of compensation

Schedule 1 makes the amendments referred to in paragraph (a) of the Overview.

Schedule 2 Amendments relating to lump sum compensation

Schedule 2 makes the amendments referred to in paragraph (d) of the Overview.

Schedule 3 Amendments relating to damages for nervous shock

Schedule 3 makes the amendments referred to in paragraph (h) of the Overview.

Schedule 4 Amendments relating to medical and related expenses

Schedule 4 makes the amendments referred to in paragraphs (b) and (c) of the Overview.

Schedule 5 Amendments relating to journey claims

Schedule 5 makes the amendments referred to in paragraph (g) of the Overview.

Schedule 6 Amendments relating to heart attack and stroke

Schedule 6 makes the amendments referred to in paragraph (e) of the Overview.

Schedule 7 Amendments relating to disease injuries

Schedule 7 makes the amendments referred to in paragraph (f) of the Overview.

Schedule 8 Amendments relating to commutation of compensation

Schedule 8 makes the amendments referred to in paragraph (i) of the Overview.

Schedule 9 Amendments relating to insurer licensing and transfer of claims

Schedule 9 makes the amendments referred to in paragraphs (j) and (k) of the Overview.

Schedule 10 Amendments relating to WorkCover Independent Review Officer

Schedule 10 makes the amendments referred to in paragraph (l) of the Overview.

Schedule 11 Miscellaneous amendments

Schedule 11 makes the amendments referred to in paragraphs (m) and (n) of the Overview, together with other minor amendments that:

- (a) simplify the notice that insurers give when disputing liability, and
- (b) change the title of authorised officers to “inspector”.

Schedule 12 Amendments relating to savings and transitional provisions

Schedule 12 makes the amendments referred to in paragraph (o) of the Overview.