



# Worker's Compensation

## The fight's not over!

Update – Wednesday 14 November 2012

### Implementation of the Workers Comp Laws

#### What happens your workers compensation claim was made before or after 1 October 2012?

- For workers with workers compensation claims made prior to 1 October 2012, the insurer must conduct a work capacity assessment of you in the 12 months after 1 January 2013 (although they can conduct the assessment before then).
- The new system will then apply to you 3 months after the date of the work capacity assessment.
- The new system has a different way of calculating your weekly benefit. Once you are put on the new system, this different calculation will be used.
- If you lodge a workers compensation claim after 1 October 2012, your entitlement to weekly payments will be determined under the new system.

#### What is the new system for calculating weekly payments?

- The calculation is based on “pre-injury average weekly earnings”. For those on weekly payments before 1 October 2012, your “pre-injury average weekly earnings” are defined as \$906.25. You will be entitled to, at best, 95% of this amount for the first 13 weeks then, at best, 80% of this amount thereafter. Injured workers working at least 15 hours a week will continue to receive, at best, 95% after week 14.
- If the work capacity assessment reveals you can work in some capacity, either for your current employer or elsewhere, payments may be reduced or terminated. No consideration is given to actual availability of work. The soonest this could happen is 3 months after the work capacity assessment.

Example: If you are assessed as capable of working as a full-time traffic controller, even if you used to be a full-time storeperson and even if there is no actual job being offered to you as a traffic controller, your weekly payments will be terminated 3 months after the work capacity assessment.

- If the work capacity assessment reveals you are totally incapacitated, you will be entitled to weekly payments up to 130 weeks. The 130 weeks starts on 1 January 2013.

- If the work capacity assessment reveals:
  - you have no work capacity, and this is likely to continue indefinitely, or
  - you are working more than 15 hours a week but are incapable of extra employment, you may be entitled to weekly payments beyond 130 weeks and up to 5 years.

Example: If you have been receiving weekly payments for 2 ½ years to top-up your full-time wage as you are working 20 hours a week on reduced duties, you will be entitled to weekly payments up to 5 years under the new system if you are assessed as incapable of extra employment.

- If you have 20% Whole Person Impairment (“WPI”) you can continue to receive weekly payments after 5 years.
- Someone with 30% WPI will receive weekly payments under the new system from 17 September 2012 and will not generally need to undergo a work capacity assessment.
- If you are receiving Section 38 payments under the old system, you can continue to receive those payments for the remainder of the Section 38 period under the old Act.

#### What is happening with Medical Expenses?

Medical and other treatment expenses are capped and will only be paid for a period of up to 12 months after you are injured or stop receiving weekly payments, whichever is longer. This means if your weekly payments are terminated 3 months after your work capacity assessment, the earliest your medical expenses will stop being paid is 12 months after that.

If you made your workers compensation claim prior to 1 October 2012 and are not receiving any weekly payments, medical expenses will cease to be covered from 1 January 2014.

**Contact your union for advice and support.**

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## **What happens if you have a Journey Claim?**

If your journey happened before 19 June 2012 you will be covered. If your journey happened on or after 19 June 2012 you may not be covered. To be covered there must be a real and substantial connection between the employment and the accident or incident out of which the personal injury arose.

Journey claims may be subject to testing in the courts so contact your union to get advice about whether your journey claim fits this definition.

## **What happens if you have a claim arising out of a heart attack, stroke or disease?**

If your heart attack, stroke or disease injury happened before 19 June 2012 you will be covered.

If your heart attack, stroke or disease injury happened on or after 19 June 2012 you may not be covered as definitions have changed. Contact your union to get advice about whether your injury fits the new definitions.

## **What happens if you have a claim for nervous shock?**

If your harm that gave rise to your claim for nervous shock happened before 19 June 2012 you will only be covered if you have commenced court proceedings before 19 June 2012.

## **What happens if you want to make a claim for lump sum compensation?**

If you lodged a claim for compensation before 19 June 2012 you will be covered by the old system.

If you didn't lodge a claim for compensation before 19 June 2012 you will be covered by the new system. Under the new system lump sum payments are only available for serious permanent injuries, which are defined as greater than 10% WPI. Lump sum payments for pain and suffering have been removed. Further, only one assessment of claims of permanent impairment is allowed for all permanent impairment, commutation or work injury damages claims.

## **What happens if you passed retirement age and are receiving weekly payments?**

If you were aged 67 on 1 October 2012 and were receiving weekly benefits, the old system applies.

## **What happens in relation to legal costs and disputes?**

### ***For disputes about liability (for example your claim was denied or treatment costs were disputed):***

- If you made your workers compensation claim before 1 October 2012, you will be able to take this claim to the Workers Compensation Commission (**WCC**) and your legal costs will be calculated under the old system (which means you won't pay for any legal costs).
- If you made your workers compensation claim after 1 October 2012, your initial legal costs (including costs to produce medical reports) will be paid by the new Independent Legal Assistance and Review Scheme (**ILARS**). If you have a lawyer, they will liaise with ILARS for you. If you don't have a lawyer, talk to your union. ILARS can also refer you to a lawyer. If your issue does not resolve and you need to go the WCC, your legal costs will be covered by ILARS if you have a reasonably arguable case. Otherwise, you will need to pay your own legal costs.

### ***For disputes about work capacity decisions:***

These disputes have a 3 stage process:

1. Internal review by the insurer;
2. Merits review by WorkCover, which will issue a binding recommendation;
3. Appeal to the new WorkCover Independent Review Officer (WIRO).

### ***For general disputes:***

The WIRO also has a general dispute resolution function for all claims and issues. The WIRO cannot make a binding decision in relation to a matter that arises under its general dispute resolution function, but the process may still lead to some claims being resolved. The WIRO can also raise issues with the Minister and Parliament.

Contact the WIRO and ILARS on 13WIRO or [contact@wiro.nsw.gov.au](mailto:contact@wiro.nsw.gov.au).

## **What happens for police officers, coal miners, paramedics, firefighters or someone covered by the Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987?**

If you are one of these workers, you continue to be covered by the old system.

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