

FACT SHEET

Workers compensation changes

Overview

The NSW Worker's Compensation Scheme needed major reform because it was more than \$4.1 billion in deficit and was not fulfilling its core responsibilities of rehabilitating injured workers, where possible, and returning them to work, while ensuring those who were unable to return to work were properly supported.

Not only was the scheme in serious financial difficulty, but NSW employers were paying workers compensation insurance premiums which were between 20 and 60 per cent higher than their counterparts in Victoria and Queensland.

The reforms

The State Government sought independent advice about WorkCover's financial position. That advice showed insurance premiums paid by employers would have to rise 28 per cent immediately if the scheme was to be financially sustainable in five years.

The advice also showed the most seriously injured workers in the scheme were receiving weekly payments barely above the poverty line.

The scheme was in massive deficit and failing to properly support those it was supposed to protect.

To address this serious imbalance, the NSW Government released an Issues Paper detailing the scheme's failings when compared to its key aims, and outlining some options for consideration.

On 2 May 2012 a Joint Select Committee of Parliament was established to inquire into and report on the NSW Workers Compensation Scheme. The Inquiry reported to Parliament on 13 June and, because of the looming financial crisis in the scheme, the NSW Government subsequently introduced the *Workers Compensation Legislation Amendment Bill 2012*.

The reforms were passed by parliament on 22 June.

The new laws change the way workers compensation benefits claims are assessed and paid.

The changes affect all new and existing workers compensation claims, except for claims from:

- police officers, paramedics and fire-fighters
- workers injured while working in or around a coal mine
- emergency service volunteers (Rural Fire Service, Life Savers, SES volunteers)
- people with a dust disease claim under the *Workers Compensation (Dust Diseases) Act 1942*.

Claims by these exempt workers will continue to be handled as though the June 2012 changes never occurred.

Some of the changes have already taken effect. Others will come into effect gradually over the next 12 to 18 months.

New definitions

Work capacity assessments

Injured workers receiving weekly benefits will undergo work capacity assessments at specified points throughout the life of their claim, and at least once in every two years. The work capacity assessment will take into account a range of factors including medical evidence, vocational retraining, and the number of hours a person is able to work.

The results of the work capacity assessment will be used to determine the worker's future entitlements to benefits. Seriously injured workers whose whole-person impairment has been assessed at more than 30 per cent will not be required to have work capacity assessments. However, those workers may request an assessment if they wish, for example, to explore return-to-work options.

Journey claims

A journey claim is an injury sustained while a worker is travelling between home and work while the worker is off duty.

The new laws mean coverage will only be available where there is a substantial connection between the person's employment and the incident out of which the injury arose.

For example, if a nurse en route to work stops to assist at a car accident, and is subsequently injured on her way to work, he or she would be covered by workers compensation insurance.

Benefit levels – weekly incapacity payments

Total incapacity

During the first 13 weeks of incapacity, workers who are totally unfit for all work will receive up to 95 per cent of their pre-injury average weekly earnings. From weeks 14 to 130, workers who have no work capacity will receive up to 80 per cent of their pre-injury average weekly earnings.

Workers who are totally unfit for all work for a long period will be better off as they will receive up to 80 per cent of their pre-injury earnings up to week 130 rather than the current \$432.50 per week which applies after the first 26 weeks.

Partial incapacity

Workers who have a partial incapacity and are able to work during the 13 weeks after a claim is made will receive up to 95 per cent of their pre-injury average weekly earnings. This amount will comprise the actual wages they are earning and a top-up compensation payment.

Workers who have returned to work for at least 15 hours per week will receive a top-up to up to 95 per cent of their pre-injury average weekly earnings for the first 130 weeks. After that, the rate will be up to 80 per cent of pre-injury average weekly earnings.

Those who have capacity to work, but who are working less than 15 hours per week from week 14 to 130 will receive up to 80 per cent of their pre-injury average weekly earnings. This amount will comprise the actual wages they are earning and a top-up benefit.

If a worker is able to work and is not working at least 15 hours per week by the end of the 130 weeks, entitlement to weekly benefits will cease. However, workers who cannot work will continue to receive benefits of up to 80 per cent of their pre-injury average weekly earnings.

Pre-injury earnings

Pre-injury average weekly earnings will be calculated based on the worker's real earnings in the period prior to injury, rather than the current method of paying either the base award rate or up to 80 per cent of average weekly earnings at the time of injury. For many people this will be a higher level of benefit than provided in the old scheme.

Capping weekly benefits

Continuation of weekly payments after 130 weeks will depend on the person being either totally incapacitated, or (if partially fit to work) having achieved an actual return to paid employment of at least 15 hours per week.

Weekly payments will be limited to a maximum of five years, or on the worker reaching the Commonwealth retiring age (whichever occurs first). At this stage, eligible workers will be able to switch to Commonwealth benefits.

Injured workers with a whole person permanent impairment over 20 per cent will be exempt from this five-year limit and will be eligible to receive weekly payments until reaching the Commonwealth retiring age, provided they have a continuing total incapacity to work. They may be eligible for Commonwealth benefits.

Lump sum payments

Pain and suffering

Payments for pain and suffering under section 67 of the *Workers Compensation Act 1987* are no longer available.

Permanent impairment claims

A threshold of over 10 per cent whole person impairment for physical injury must be reached to access a permanent impairment lump sum, including for hearing loss. The threshold for psychological injury lump sum payments is unchanged (15 per cent whole person impairment).

Assessment of whole person impairment

An injured worker can only be assessed for permanent impairment once .

Medical benefits

Payment for medical and related treatment will end at whichever occurs last:

- 12 months after the claim for compensation is made, or
- 12 months after the last payment of weekly benefits.

The restriction does not apply to workers with a whole person impairment of over 30 per cent. For these workers, medical cover continues until the Commonwealth retiring age is reached.

Diseases, heart attack and stroke injuries

Heart attacks and strokes are only covered by the scheme if the nature of the employment gave rise to a significantly greater risk of the worker suffering the injury.

For a disease injury, the worker's employment must be the main contributing factor.

Nervous shock and death benefits

There is no entitlement for family members of deceased or injured workers to make nervous shock claims on the NSW workers compensation scheme.

The existing statutory compensation death payments will continue to apply and include:

- an indexed lump sum (currently \$481,950) payable to financial dependents, or the deceased worker's estate if there are no dependents
- indexed weekly payments for dependent children (currently \$122.50 per child per week)
- funeral expenses (\$9,000)

Return to work obligations

Injured workers and their employers need to work together to ensure the best possible return-to-work results. The changes mean a worker who is able to work must, in co-operation with the employer or insurer, make reasonable efforts to return to work in suitable employment, and may request their employer to provide such suitable employment. The employer must comply with this request so far as it is practicable. WorkCover inspectors are now authorised to issue employer Improvement Notices if they believe the employer is not meeting their obligations in this regard. In addition, it is an offence for the employer if they fail to meet their obligations, subject to a penalty of up to \$11,000. If a worker who is able to work fails to make reasonable efforts to do so, he or she may have their weekly payments suspended or – in extreme cases - terminated.

Existing Claims

For those already receiving weekly payments immediately prior to commencement of the new arrangements, special arrangements apply. The changes differ depending on the length of time that people have been receiving payments and their level of work capacity.

Some features of the transitional arrangements are:

- seriously injured workers who have been receiving long-term weekly benefits and whose whole person impairment is more than 30 per cent can move from \$432.50 per week, to the transitional rate of \$725. This will take place as soon as practicable. WorkCover is taking steps to apply the new benefits to these workers as soon as possible.
- during the first 26 weeks of incapacity payments, the amount paid will be the same as under the existing rules;
- claimants who have already received 26 weeks of payments and have an ongoing entitlement will be paid according to the transitional rate that is significantly more than the current basic statutory rate of payment; and
- the existing weekly payment rules will continue to apply until the person has undergone an individual work capacity assessment. Due to the large number of people receiving payments, it may take more than 12 months for all existing claimants to undergo work capacity assessment.

Workers will be given three months' notice of any changes to their weekly benefits due to the new laws. The most seriously injured workers will not be subject to work capacity assessments unless they wish to have one.

Disclaimer

This publication may contain work health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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