

## LEGISLATIVE DEVELOPMENTS

### 2018 Amendments to Workers Compensation Legislation

The *Workers Compensation Legislation Amendment Bill 2018* was passed by the NSW Parliament on 17 October 2018 and is presently awaiting assent and announcement of the date for commencement.

Most notably, the new laws will abolish the current system of review of work capacity decisions by WIRO and SIRA and restore the jurisdiction of the Workers Compensation Commission to determine all disputes, including the review of work capacity decisions - effectively creating a 'One-stop Shop' for dispute resolution.

The Commission will also have the power (subject to Regulations) to determine permanent impairment disputes without referring the dispute to an Approved Medical Specialist (AMS). This may reopen the door to compromise settlements of lump sum claims where there are competing assessments of the degree of permanent impairment.

Another major change is the repeal of the current section 35 (determination of PIAWE) and the introduction of a new Schedule 3 to the 1987 Act which will change the definition of current weekly earnings, remove the current exclusion of overtime and allowances from earnings after 52 weeks, and provides a simplified definition of PIAWE.

Transitional arrangements will apply to some of the changes, which will take effect from the date of commencement.

A summary of the changes is set out in the table below. An update alert will be issued following commencement of the amendments.

New or Amended Provision	Short Description	Comment	Takes Effect	Transitional Arrangements
Amendments to section 43 of the 1987 Act; repeal of section 54 and Part 3 Division 2 Subdivision 3A of the 1987 Act; repeal of section 74 of the 1998 Act	Abolishes reviews of work capacity decisions by WIRO and SIRA; restores jurisdiction of Commission to determine all disputes, including review of work capacity decisions.	Retains internal reviews by insurers, which must be determined and a decision notified to the worker within 14 days after the request for review is made by the worker.	On a date to be appointed by proclamation.	Current provisions will continue to apply to existing WCDs during transitional review period (6 months from commencement) or if subject to review immediately before expiry of the transitional review period – until the review is finally determined.
New section 289B of the 1998 Act regarding stay of disputed work capacity decision (WCD)	WCD is stayed once dispute is referred to the Commission, provided the referral is made before the expiry of the relevant notice period under section 80.	The WCD will not be stayed if the dispute is referred to the Commission after a WCD takes effect.	On a date to be appointed by proclamation.	
Repeal of section 65(3) of the 1987 Act; new section 321A; and amendment to section 322A of the 1998 Act	Allows Commission to determine a claim for WPI without first referring the assessment to an AMS.	Subject to new regulations regarding when a dispute about WPI must or may be referred to an AMS. Note: <i>The determination of a dispute regarding WPI by the Commission without referral to an AMS will be treated as the 'one assessment' allowed under section 322A.</i>	On a date to be appointed by proclamation.	

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New or Amended Provision	Short Description	Comment	Takes Effect	Transitional Arrangements
New Schedule 3 to the 1987 Act and repeal or amendment of sections regarding calculation of weekly payments	Simplifies the calculation of PIawe and amends other aspects of calculating weekly payments.	Provides new definition for PIawe as: The weekly average gross earnings received by the worker in any employment in the relevant period before the injury (usually, 52 weeks). And defines <i>earnings</i> in a week as: The income of the worker received for work performed in any employment during the week.	On a date to be appointed by proclamation.	<i>Earnings amendments</i> do not apply to injury sustained by a worker before commencement of the amendments (except a limited application to weekly benefits for injuries sustained between the date of assent and date of commencement of the amendments).
New Part 7 of Chapter 2 of the 1998 Act	Deals with the collection, sharing and use of personal and other information by insurers and the Authority. Introduces a scheme for the mandatory notification of breaches of the Workers Compensation Acts.	Subject to new regulations.	On the date of assent.	
New Division 3 of Part 2 Chapter 4 of the 1998 Act	Deals with notification of insurer decisions to worker and the period of notice required. Effect of stay of decision on the notice period.	Provides for a single form of notice whether disputing liability for a claim or reducing weekly payments; period of notice to be given to worker of decision by insurer; sections 54 and 74 repealed and replaced with new sections 78, 79 and 80.	On a date to be appointed by proclamation.	
New section 87EAA of the 1987 Act	Commutation of medical expenses compensation is not permitted for worker with catastrophic injury.	Definition of <i>catastrophic injury</i> is to be included in Workers Compensation Guidelines.	On a date to be appointed by proclamation.	
Amendment to section 231 of the 1998 Act	Requirement for employer to post in the workplace a summary of the Acts and insurance details.	This obligation may be satisfied by posting the required information on a website or by any other method authorised by the regulations.	On a date to be appointed by proclamation.	
Amendments to <i>Motor Accident Injury Act 2017</i>	A claimant who receives workers compensation benefits as well as CTP damages for the same injury will only need to repay the amount of weekly payments received (not medical, rehab or other treatment expenses).		On the date of assent.	Extends to compensation or damages paid or payable before commencement in respect of MVA occurring on or after 1.12.17.

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New or Amended Provision	Short Description	Comment	Takes Effect	Transitional Arrangements
Amendments to <i>Motor Accident Injury Act 2017</i>	A claimant who recovers CTP damages as well as permanent impairment lump sum compensation under Section 66 of the WCA will only need to repay the section 66 sum if that worker has recovered damages for Non-Economic Loss (i.e. pain and suffering and loss of amenities of life).		On the date of assent.	Extends to compensation or damages paid or payable before commencement in respect of MVA occurring on or after 1.12.17.
	Workers injured in a motor vehicle accident who are entitled to receive workers compensation benefits maintain an entitlement to reasonable and necessary medical, treatment and care expenses from the CTP insurer should workers compensation entitlements cease.		On the date of assent.	Extends to compensation or damages paid or payable before commencement in respect of MVA occurring on or after 1.12.17.

The amendments, with very few exceptions, do not affect 'exempt workers' - i.e. police, fire fighters, ambulance paramedics, and rescue workers.

**Note:** Information current as at 22.10.2018.

## Bill introduced to establish presumptive rights to compensation for firefighters in respect of certain cancers

[Link to website](#)

Further legislative changes are presently being considered by the NSW Parliament under the Workers Compensation Legislation Amendment (Firefighters) Bill 2018.

If passed, the changes will enable eligible firefighters diagnosed with one of 12 specified cancers, and who meet applicable employment periods, to be automatically presumed to have acquired that cancer because of their firefighting work. The presumption will apply to all eligible firefighters with cancers diagnosed on or after 27 September 2018. A firefighter who has previously had a claim for one of the specified cancers denied on the basis that the firefighter was unable to prove a link to employment may also bring a new claim under the presumption legislation.

The Bill is currently awaiting further debate in the Legislative Assembly.

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