

LEGISLATIVE DEVELOPMENTS

A big start to the New Year!

The balance of the changes made by the *Workers Compensation Legislation Amendment Act 2018* commenced on 1 January 2019. The amendments include:

- The Workers Compensation Commission will resume its role as the sole dispute resolution tribunal for workers compensation matters, with SIRA and WIRO losing their respective roles regarding merit and procedural reviews of work capacity decisions. The Commission will now have the power to determine disputes regarding work capacity decisions, which it had previously been prohibited from doing.
- The Commission will now have the power to determine claims for section 66 permanent impairment compensation without necessarily referring the claim to an Approved Medical Specialist, in circumstances to be prescribed by regulation. The Commission's determination will be treated as an assessment for the purposes of the one assessment permitted by section 322A of the 1998 Act.
- A single *decision notice* pursuant to section 78 of the 1998 Act will replace the previous requirement for dispute notices pursuant to section 54 of the 1987 Act or section 74 of the 1998 Act. A new form for the decision notice has been released by icare.
- Commutation of liability for medical expenses pursuant to section 87EAA of the 1987 Act is not permitted in relation to a catastrophic injury (as defined in the regulation).

Awaiting Proclamation

- The calculation of pre-injury average weekly earnings (PIAWE) in respect of injuries received on or after (date to be proclaimed) will be :
The weekly average of the gross pre-injury earnings received by a worker during the period of 52 weeks before the injury for work in any employment in which the worker was engaged at the time of injury.
- There will no longer be any need to separate overtime and allowances from earnings when making the calculation, and no change to the PIAWE after the first 52 weeks of compensation payments to remove overtime and allowances. Adjustments will still be required for non-pecuniary benefits (NPB).
- A new Schedule 3 to the 1987 Act will include the definitions for PIAWE; earnings; PIAWE for short-term workers, apprentices, trainees and young people; current work capacity; current weekly earnings; and the value of NPB.
- Consequential changes have been made to the calculation of weekly payments pursuant to sections 36, 37 and 38 of the 1987 Act.

The **Workers Compensation Amendment Regulation 2018** also introduced changes on 1 January 2019, including the requirements for section 78 decision notices issued by insurers, and changes to Schedule 6 costs for lawyers advising workers on reviews of work capacity decisions.

New **Workers Compensation Guidelines** take effect from 1 January 2019 and include (at part 7.5 of the Guidelines) detailed requirements for independent medical examinations (IME) and reports, and the information to be provided to a worker regarding an IME examination. The guidelines include the criteria for catastrophic injuries (at Part 9 Commutation).

New **Workers Compensation Medical Dispute Assessment Guidelines** also take effect from 1 January 2019 and deal with the referral of disputes to the Commission for allocation to an Approved Medical Specialist, the medical assessment process, Medical Assessment Certificate, and appeals.

SIRA has issued an information fact sheet for workers regarding independent medical examinations, which can be downloaded at:

<https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-and-claims/independent-medical-examinations>

All of these changes are being incorporated into the TurksLegal Online *Guide to Workers Compensation in NSW*. If you have not yet registered for access to the Guide, please go to <http://turkspublicationhub.turkslegal.com.au/workerscompensation/public>.

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