**Legislative Developments**

**Workers Compensation Amendment (Existing Claims) Regulation 2014**

**Summary**

On 3 September 2014 the state government issued a regulation which exempts claims made before 1 October 2012 from some aspects of the 2012 Amendments.

The Existing Claims Regulation (ECR) amendments take effect from 1 October 2012 unless otherwise provided.

The ECR amendments apply to ‘existing claims’, i.e. claims made before 1 October 2012.

**Weekly Payments after Retirement Age**

Before the 2012 Amendments, section 52 of the Workers Compensation Act 1987 (“the Act”) provided for payment of weekly compensation for up to one year after a worker’s retirement age. In 2012 this was changed to limit payments to a worker’s retirement age, and not beyond. The ECR amendments restore the previous provision, so that existing claimants are able to receive weekly payments up to one year after retirement age.

**Medical and Other Expenses**

Section 59A of the Act limits a worker’s entitlement to payment of medical and related expenses to a period of 12 months from the date that a claim for compensation is first made, or for up to 12 months after the cessation of weekly payments, whichever is the latter.

The ECR amendments now remove this 12 months limitation for existing claimants, who may now claim certain expenses up to retirement age. This applies to:

(a) medical, hospital, rehabilitation and domestic assistance expenses, but only if the worker has a permanent impairment greater than 20% WPI;

(b) the cost of crutches; artificial members, eyes or teeth; hearing aids (including batteries); spectacles; and other artificial aids; and

(c) costs of modifying the worker’s home or vehicle.

Also, the 12 months limit will not apply to the cost of secondary surgery if it is ‘directly consequential on earlier surgery’ and affects the same part of the body as the earlier surgery, and it is approved by the insurer within 2 years after the earlier surgery.

If a claim for secondary surgery is made, but is disputed by the insurer, within 2 years after the earlier surgery, the claim for secondary surgery may be approved after the 2 years period if the dispute is later determined in favour of the worker.

**Work Capacity Decisions**

An insurer’s internal review of a work capacity decision pursuant to section 44 of the Act, in relation to an existing claim, will stay (i.e. postpone or suspend) the decision from the time the application for review is made until the result of the review is notified to the worker (or the application is withdrawn). However, this stay only operates if the worker’s application for review is made within 30 days after the worker was notified of the original work capacity decision.

The ECR amendments have extended until 31 August 2015 the date by which an insurer must make a work capacity decision in relation to an existing recipient of weekly compensation (i.e. an injured worker who was receiving weekly compensation before 1 October 2012).
Comment

As the ECR amendments apply from 1 October 2012, existing claimants whose weekly payments ceased at retirement age because of the operation of section 52, or whose treatment and related expenses were refused by an insurer relying on section 59A, may now renew their claims for weekly compensation and treatment expenses.

For more information, please contact:

Sam Kennedy
Partner
T: 02 8257 5733
M: 0417 269 105
sam.kennedy@turkslegal.com.au