

NSW Workers Compensation

The New South Wales Government has reviewed the Workers' Compensation Scheme because it was found to be more than \$4.1bn in deficit. It was stated that premiums would have to increase by 28% to cover these losses.

AMIC provided a submission to the Joint Parliamentary Committee on 16 May 2012, which incorporated comments from members collated from questionnaire returns.

The outcomes of the review include:

- Work Capacity Assessments – will be required every two years unless the worker is deemed to be more than 30% impaired. The results of the assessments will be used to determine the worker's future entitlements to benefits.
- Journey Claims – these have now been generally eliminated except where there is a substantial connection between the person's employment and the incident. The new provision applies to journey claims that occur on or after 19th June 2012.
- Weekly Incapacity Payments – during the first 13 weeks workers who are totally unfit for all work will receive up to 95% of their pre-injury average weekly earnings (PIAWE).
- If the employee works at least 15 hours per week, payments will be topped up to 95% for the first 130 weeks and after that will receive 80% of their PIAWE. If working less than 15 hours the top up is to 80% of their PIAWE.
- Weekly payments will cease at 5 years or the worker reaching the Commonwealth retiring age (whichever occurs first).
- Lump Sum Payments – for pain and suffering have been eliminated (the old section 67).
- Permanent Impairment Claims – a threshold of over 10% whole person physical impairment must be reached for eligibility, including hearing loss. The threshold for psychological injury remains at 15% whole person impairment.
- Medical Benefits – will cease 12 months after the claim is made or 12 months after the last payment of weekly benefits.
- Nervous Shock Claims – now eliminated.
- Return to Work – the injured worker must make a reasonable effort and the employer must make a job available as far as is practicable.

Further Changes

Since June 2012, there have been 3 stages of reforms passed by the NSW Parliament to the NSW workers compensation scheme intended to reduce the growing scheme deficit, make the scheme more financially viable, protect the entitlements of seriously injured workers and encourage less seriously injured workers to re-enter the workforce as soon as possible.

Another stage of reform commenced on 1 October 2012, in which all new claims are to be managed according to the new legislative requirements. The major changes are:

Changes to weekly benefit payments

From 1 October 2012, employers have had to change the way in which they determine the amount of initial weekly payments for workers whose claim is notified to their workers compensation agent (insurer).

The changes to weekly benefit payments that came into effect on 1 October 2012 only apply to claims received by your insurer on or after 1 October 2012. Workers whose claims were notified to your insurer prior to 1 October 2012 should continue to be paid according to the existing legislation (i.e. pay either the base award rate or 80 per cent of average weekly earnings) and will be transitioned to the new legislation from 1 January 2013.

The new legislation removes the distinction between award and non-award workers and also introduces the concept of Pre-Injury Average Weekly Earnings (PIAWE) which replaces Current Weekly Wage Rate (CWWR) as the basis for calculating benefit amounts.

Benefit levels during the first 13 weeks of incapacity (first entitlement period)

Workers who are totally unfit

During the first 13 weeks of incapacity, workers who are totally unfit for all work should be paid 95% of their PIAWE.

Workers who have a partial incapacity

During the first 13 weeks of incapacity, workers who have a partial incapacity and are able to work should be paid 95% of their PIAWE. This amount will comprise the actual wages they are earning and a top-up compensation payment.

Pre-injury Average Weekly Earnings (PIAWE)

The PIAWE is the average of weekly earnings over the 52 week period prior to the injury (subject to some exceptions). The calculation of earnings must take into account any periods of paid leave, but must not include any periods of unpaid leave.

For more information about how to calculate PIAWE, please consult the WorkCover NSW Calculating Pre-Injury Average Weekly Earnings form.

Non immediate changes to weekly benefits

Other changes to weekly benefits that come into effect on 1 October 2012 will not impact employers immediately. These changes are:

- **Changes to entitlement periods**

The method of calculating initial payments outlined above applies to the first entitlement period (0-13 weeks). The second entitlement period will commence after 13 weeks of weekly benefits have been paid.

- **Cessation of weekly benefits after 260 weeks**

Weekly benefits will cease after 260 weeks (whether or not consecutive) unless worker has been assessed at greater than 20% whole person impairment.

Changes to payment of medical benefits

The key changes to medical benefits as of 1 October 2012 are:

- **A time limitation on payment of medical and related treatment expenses**

Medical payments will cease 12 months after the last payment of weekly compensation.

- **Requirement for prior approval of treatment by the insurer (with some exceptions).**

Work Capacity Assessments

Any injured workers who lodge a claim on or after 1 October 2012 will be subject to the new Work Capacity Assessment provisions. Work Capacity Assessments will be undertaken by insurers, and will assess an injured worker's capacity to return to work in some kind of employment.

Seriously injured workers will not be required to undergo a Work Capacity Assessment, unless they choose to do so to explore their return to work options.

Introduction of Independent review process & insurer dispute notices

New legislation has been introduced to formalise the Internal Dispute Resolution process for decisions regarding weekly benefits and Work Capacity.

Return to work obligations for employers and injured workers

Employers will continue to be required to support a safe return to work for their employees, including the reasonable provision of suitable duties for injured workers where requested. WorkCover Inspectors are now authorised to issue Employer Improvement Notices where these obligations are not met by an employer. Failure to comply by an employer could also be considered an offense subject to a penalty of \$5500.

Injured worker obligations are maintained under the new legislation. Workers who are non compliant with their injury management plans, fail to co-operate with Workers Compensation Agents or who are aggressive towards Agent staff could face suspension, termination or discontinuation of benefits.