

Amendments to the Queensland Workers Compensation System

On 29 October 2013 changes to the Queensland Workers Compensation legislation received Royal Assent. The amendments are the Queensland Government's response to the Queensland Parliament Finance and Administration Committee's report on its inquiry into the operation of Queensland's workers' compensation scheme.

Background

Last year the AMIC lodged a submission with the parliamentary committee into the review of the Queensland Workers Compensation system, which included most of the changes that have been made.

Late last year the AMIC, along with a delegation of members, appeared before the parliamentary committee at Queensland Parliament House highlighting the need for changes to the current legislation.

Earlier this year the report released by the parliamentary committee did not include these recommended changes. In response, the AMIC delegation wrote to the Minister seeking the changes to the Act as proposed by the AMIC members. The AMIC therefore, welcomes these amendments to the workers compensation system as necessary to balance the needs of employers and employees.

The Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013 has made the following changes:

- amend the requirements to appoint a rehabilitation and return to work coordinator;
- require insurers to mandatorily refer injured workers to an accredited return to work program;
- require a worker to provide an employer with a notification of previous injuries, if requested;
- allow for access to a prospective worker's claims history in particular circumstances;
- change the measure for determining statutory lump sum compensation from work related impairment (WRI) to degree of permanent impairment (DPI);
- close the potential loophole caused by *Foster & Anor v Cameron* [2011] QCA 48;
- introduce a more than 5% degree of permanent impairment threshold to access damages at common law;
- increase the onus of proof for compensable psychiatric or psychological injuries;
- provide that WorkCover refer all allegations of fraud-related offences to the Regulator for investigation and if necessary prosecution; and
- increase penalties for persons who defraud or attempt to defraud insurers.
- abolishes the Workers' Compensation Regulatory Authority (trading as Q-COMP) and amends provisions relating to damages in particular circumstances.

These changes are retrospective, some which came into effect on 15 October 2013, and others which came into effect on 29 October 2013. Workers who are injured prior to the introduction of this Act will have their claims dealt with under the legislation in force at the time of their injury.

What are the objectives of the changes?

- A. To implement the Queensland Government's response to the Finance and Administration Parliamentary Committee's report on its inquiry into the operation of Queensland's workers' compensation scheme.
- B. To make changes to the basis for assessment of impairment and to align the method between the statutory and common law provisions of the scheme.

1. Changes effective from 15 October 2013:

- The introduction of a threshold of greater than 5% degree of permanent impairment (DPI) to access common law damages. This applies to injuries from 15 October 2013. For injuries that occur over a period of time, the date of injury is considered to be the date of initial health practitioner consultation for the injury.
- The method for assessing permanent impairment and calculating statutory lump sum compensation has changed from work related impairment (WRI) to degree of permanent impairment (DPI). This change applies to claims with a date of injury from 15 October 2013. For injuries sustained prior to 15 October 2013, they will still be assessed using the Table of Injuries and AMA4 and these workers will still receive an offer of lump sum compensation based on their DPI.
- For workers injured from 15 October 2013, their injuries will be assessed using the new Guide to the Evaluation of Permanent Impairment (GEPI) (which references AMA5). Workers will receive an offer of lump sum compensation based on their DPI. Physical injuries are combined to calculate the DPI, however psychiatric injuries cannot be combined with physical injuries.
- Development of a training program for doctors on the new Guide and updating Notice of Assessment forms. The Regulator will publish the GEPI in the Queensland Government Gazette.
- The criteria for Rehab and Return to Work Coordinators (RRTWC) has changed. If an employer is in a 'high risk industry' and wages in the preceding year are greater than 2600 x QOTE (Queensland ordinary time earnings), then they must have a RRTWC. If an employer is not in a 'high risk industry' they only need a RRTWC if wages are greater than 5200 x QOTE. For 2013-2014 QOTE is \$1370.10. RRTWCs are no longer required to complete a workplace rehabilitation course through a registered training organisation. Instead RRTWCs must be appropriately qualified.

2. Changes effective from 29 October 2013:

- Employment to be 'the major significant contributing factor' for psychological or psychiatric claims. For psychological or psychiatric injuries (including aggravations of pre-existing conditions) workers are only entitled to compensation if their employment was 'the major significant contributing factor' to their condition.
- Employers can request a prospective worker to provide them with information about pre-existing injuries or medical conditions. Disclosure of pre-existing conditions applies to 'employment processes' from 29 October 2013. An employer may ask a prospective worker in writing about pre-existing injuries or medical conditions. The request must be accompanied by specific information about the future duties and the implications if the worker fails to properly disclose their conditions. A worker may not be entitled to compensation or damages if they have knowingly made a false or misleading disclosure about an injury or condition and they suffer an aggravation of that injury or condition.
- Employers can request a prospective worker's claims history summary from the Office of Fair and Safe Work Qld (**OFSWQ**). This request must be made on the approved form, with an application fee, and the prospective worker's consent. OFSWQ will soon publish information about this process.

- Q-COMP regulatory functions to move to OFSWQ. Most powers have moved to OFSWQ effective 29 October 2013. These include: Medical Assessment Tribunals, reviews and appeals, self-insurance licensing, monitoring insurer performance, scheme data analysis and approved forms. As part of the integration, OFSWQ will absorb existing Q-COMP staff.
- OFSWQ to prosecute all worker fraud cases, and penalties increased. OFSWQ will manage all prosecutions from 29 October 2013. WorkCover will send a detailed brief to OFSWQ if it reasonably believes someone has committed an offence. The penalties will increase to up to \$55,000 or a maximum of five years imprisonment (previously up to \$44,000 and maximum 18 months imprisonment).
- WorkCover to be responsible for Table of Costs with self-insurer consultation. WorkCover now has responsibility for the various tables of costs, including medical, hospital and rehabilitation, and is working on the Medical Table of Costs due to be updated from 1 December 2013.
- Insurers to provide a mandatory accredited Return to Work (RTW) program for common law claimants. Insurers must take all steps reasonably practicable to secure rehabilitation and early return to work. Insurers must develop and maintain a RTW program in consultation with the employer, worker and registered treatment providers. If a worker lodges a Notice of Claim WorkCover must refer them to an accredited RTW program, unless they can't participate because of their injury. Common law rehabilitation applies to all claims, unless litigated.
- Close the potential loophole caused by Foster & Anor v Cameron [2011] QCA 48. The entitlement to damages for gratuitous care has been clarified.

How can I obtain more information?

For further details regarding these amendments and how they affect employers and workers contact the AMIC or you can go to the following WorkCover link:
<http://www.workcoverqld.com.au/forms-and-resources/acts-and-regulations/legislative-amendments-october-2013>