

**AMENDMENTS CONTAINED IN THE WORKERS COMPENSATION
LEGISLATION AMENDMENT ACT 2010**

- **Clarify that the maximum statutory cap for weekly benefits paid for partial incapacity applies to the benefit entitlement only.**

This amendment makes it clear that the maximum statutory cap for weekly benefits is applied to the compensation payment only. This means that the cap applies to the *make up pay* component of a worker's weekly income, not the total amount received by the worker, including wages or salary.

- **Clarify that there is no stay on an award for weekly benefits when that award is being appealed.**

This amendment will require that weekly benefits be paid to a worker pending the outcome of a decision on an appeal against the payment of those benefits.

- **Align the maximum age for determining future economic loss under work injury damages to reflect the age of retirement under the *Social Security Act 1991* (Commonwealth).**

The amendment changes the upper age limit for considering loss of income in work injury damages claims from 65 to the age of retirement in line with the Commonwealth entitlement for the age pension.

- **Provide for reimbursement of the cost of obtaining a permanent impairment medical certificate to form part of the worker's permanent impairment compensation claim.**

This means that a worker will be reimbursed the cost of obtaining a permanent impairment medical certificate when they have finalised their claim for permanent impairment, not when they have paid for the certificate.

- **Enable the Workers Compensation Commission to make determinations in respect of prospective treatment.**

This amendment resolves the anomaly in the legislation highlighted in the decision of *Wayne Widdup v Roy Hamilton [2006] NSWCCPD 258* (4 October 2006). This will mean that the Commission has the power to make a determination on medical treatment that has not already been paid for.

- **Ensure that a worker has been paid their lump sum statutory entitlements before they settle a work injury damages claim.**

This amendment prevents the rolling of all entitlements (statutory and damages) into a single lump sum payment.

- **Clarify the nature of appeals by way of a 'review' of the decisions of Arbitrators and Medical Appeal Panels and the circumstances in which fresh evidence may be admitted in those appeals.**

This provision reverses the effects of a number of decisions made by the Court of Appeal which expanded the scope of appeal rights so that an appeal could be heard de novo (from the beginning). This was contrary to the Commission's objectives around the timely and efficient dispute resolution.

The amendments also ensure that only fresh evidence that was *both* not available to the *parties* and not reasonably obtainable by the *parties* before the proceedings can be admitted.

- **Clarify the operation of provisions that enable certain matters of the Workers Compensation Commission to be reconsidered as an alternative to formal legal appeals or challenges.**

The former drafting of section 378 inadvertently allowed appeals against a decision of an approved medical specialist to be lodged as reconsiderations, even where they didn't meet the grounds for appeal. This amendment ensures that all appeals against a decision of an approved medical specialist must first meet the grounds of appeal before it will be reviewed either as an appeal to a medical appeal panel or as a reconsideration.

- **Transitional Provisions**

The transitional provisions operate as follows:

I. Weekly payments during partial incapacity

The amendment to section 40 of the *Workers Compensation Act 1987* to clarify the calculation of weekly benefits during partial incapacity does not have retrospective effect. The amendment will apply for any payment of weekly benefit during partial incapacity after commencement regardless of when the injury occurred.

II. Retirement Age

The amendment to align the maximum age for determining economic loss for calculating work injury damages with the age for entitlement to the age pension does not apply to any award for damages where the proceedings were commenced before the commencement of the amendment (section 151IA of the 1987 Act).

III. Rates for workplace/occupational rehabilitation services

The amendment to remove restrictions of the maximum amount for which an employer is liable for workplace rehabilitation services provided to an injured worker will not affect any claim made before the amendment, and any such claim made will be regulated as if the amendment did not occur (repeal of sections 63A(3) and (4) of the 1987 Act).

IV. Reimbursement for costs of medical certificate and examination

The amendment to ensure that reimbursement for costs of a permanent impairment medical certificate and examination is paid as part of the worker's claim for permanent impairment, is retrospective. This amendment extends to compensation payable in respect of the obtaining of a permanent impairment medical certificate where the claim for permanent impairment which has not been finalised.

V. Lump sum compensation to be paid before damages recovered

The amendment to prevent a worker from recovering work injury damages until the worker has been paid any lump sum compensation to which the worker is entitled, extends to a claim for damages that is pending immediately before the commencement of the amendment, but does not apply to a claim finally determined or settled before that commencement (section 280AA of the 1998 Act).

VI. Appeals against medical assessments

The amendment to make it clear that an appeal against a medical assessment is limited to a determination as to the grounds on which the appeal is made, and is not a review of any other aspect of the medical assessment, extends to a medical assessment made before the commencement of the amendment (including an appeal made before that commencement) but not so as to affect any decision of a court, the Registrar or an Appeal Panel made before the commencement of the amendment (sections 327 and 328 of the 1998 Act).

VII. Appeals against Arbitrator's decisions

The amendment to make it clear that an appeal against a decision of an Arbitrator is not a full review of the Arbitrator's decision and is limited to a determination as to whether the decision appealed against was affected by error, will not apply to an appeal if the decision appealed against was made before the commencement of the amendment (section 352 of the 1998 Act).

VIII. Appeals against an Arbitrator's decision about weekly payments of compensation

The amendment to provide that an appeal against an Arbitrator's decision about weekly payments of compensation does not stay the decision, so that weekly payments of compensation will remain payable pending determination of an appeal, extends to appeals pending on the commencement of the amendment (section 352(5A) of the 1998 Act).

IX. Indexation of maximum interim medical expenses payment

The Bill includes an amendment to provide for the indexation of the limit on interim payment directions for medical expenses compensation. The first adjustment of this limit will be on and from 1 April 2011 (Division 6 (Indexation of certain amounts) of Part 3 of the 1987 Act in relation to an adjustable amount in section 297(2) of the 1998 Act).

X. Coal Miners

None of the amendments in the Bill apply to coal miners. The relevant transitional provision clarifies that provisions regarding coal miners remain in force as if the amendments in the Bill, once made, had not been enacted.

AMENDMENTS CONTAINED IN THE WORKERS COMPENSATION REGULATION 2010

The *Workers Compensation Regulation 2010* remakes the *Workers Compensation Regulation 2003* with minor amendments, including amendments as a result of the consultation process and additional changes as a result of the passage of the *Workers Compensation Legislation Amendment Bill 2010*.

The amendments made by the proposed *Workers Compensation Regulation 2010* include:

- Inserting a definition of "approved form", a term used throughout the Regulation.
- Removal of redundant provisions.
- A penalty notice offence for a breach of section 238AA, which requires a person to produce documents or evidence on demand by an authorised officer.
- In clause 56, amending the definition of Authorised Representative.
- In clause 61, amending the reference to relevant provisions in the 1998 Act and clarify that the register of injuries must be available in a form that is accessible to all workers.
- In clause 65, amending to ensure that there are no barriers to admission of certain forensic medical reports in proceedings in the Workers Compensation Commission.
- In clause 66, amending to clarify the nature of a supplementary report.
- Amendments consequent on the *Workers Compensation Legislation Amendment Act 2010* which is proposed to commence on 1 February 2011. The amendments include changed terminology in relation to workplace rehabilitation providers and inserting the latest index number for October 2010.

The Regulation is made under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and commences on 1 February 2011.