



New South Wales

Workers Compensation Legislation Amendment Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Workers Compensation Act 1987* and *Workplace Injury Management and Workers Compensation Act 1998* as follows:

- (a) to extend the jurisdiction of the Workers Compensation Commission (*the Commission*) in relation to disputes about treatment and services that have been provided to an injured worker so as to cover disputes about treatment and services that are proposed to be provided,
- (b) 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,
- (c) to make it clear that an appeal against a medical assessment is limited to the grounds on which the appeal is made and is not a review of any other aspect of the medical assessment,
- (d) to make it clear that fresh evidence cannot be adduced on an appeal against a medical assessment or an Arbitrator's decision unless the evidence was *both* not available to the appellant and not reasonably obtainable by the appellant before the proceedings concerned,

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- (e) to prevent a general provision for the review of approved medical specialist decisions being used to circumvent the required grounds for an appeal against or further assessment of such a decision,
- (f) to increase the monetary threshold for an appeal against an Arbitrator's decision to \$7,500 (currently \$5,000) and to remove the additional threshold that required the amount of compensation at issue to be at least 20% of the amount awarded in the decision appealed against,
- (g) to provide for appeals against interlocutory decisions of Arbitrators with the leave of the Commission,
- (h) to make it clear that there is an automatic right of appeal against an Arbitrator's decision once procedural requirements for such an appeal are satisfied,
- (i) to provide for the automatic indexation of the \$7,500 threshold for appeals against Arbitrator decisions and the limit on interim payment directions for medical expenses compensation,
- (j) to align the maximum age for determining economic loss for calculating work injury damages with the age for entitlement to the age pension,
- (k) to provide for the approval (rather than accreditation) of providers of rehabilitation services (for consistency with the *Nationally Consistent Approval Framework for Workplace Rehabilitation Providers*) and to make consequential changes to terminology for consistency,
- (l) to remove restrictions on the maximum amount for which an employer is liable for workplace rehabilitation services provided to an injured worker,
- (m) to exempt a specialised insurer from the requirement to be authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business if the insurer does not require that authorisation to lawfully carry on the business,
- (n) 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, so that the worker will not lose the entitlement to compensation by recovering damages before compensation is paid,
- (o) to ensure that the compensation to which a worker is entitled in respect of the obtaining of a permanent impairment medical certificate is paid as part of the worker's claim for permanent impairment compensation,
- (p) to restrict the jurisdiction of the Commission to determine the liability of an employer or insurer to reimburse the Insurance Fund so that the Commission will not be authorised to waive recovery against the employer or insurer or to interfere with a decision of the Nominal Insurer about waiver of recovery,
- (q) 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,

- (r) to ensure that workers in receipt of weekly payments of compensation during partial incapacity who have returned to work will receive compensation up to the maximum rate in addition to earnings from their employer (by making it clear that the maximum rate operates as a limit on the compensation payable and not as a limit on the combined total of compensation and earnings),
- (s) to provide for the provision of a security bond as a means of satisfying a requirement for the deposit of an amount of money as security by self-insurers, specialised insurers and retro-paid loss employers,
- (t) to provide for the appointment of one or more senior approved medical specialists,
- (u) to enact consequential amendments and savings and transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Workers Compensation Act 1987 No 70

Maximum weekly payments during partial incapacity

Schedule 1 [3]–[6] make it clear that for workers who return to work during partial incapacity, the maximum weekly compensation amount is a limit on the compensation payable and not a limit on the combined total of compensation and earnings. The amendments allow a worker to be paid up to the maximum weekly compensation amount in addition to the earnings from their employer (with the total of earnings and compensation not to exceed pre-injury earnings). The current limit on maximum weekly payments for workers who unreasonably reject suitable employment is not changed.

Occupational rehabilitation services

Schedule 1 [8] and [9] remove the definition that lists the services that constitute occupational rehabilitation services and replace it with a new definition of *workplace rehabilitation service*, which is defined to mean any services provided by a person approved as a provider of rehabilitation services for the purposes of return-to-work plans of employers. **Schedule 1 [1], [2], [7], [10], [12] and [13]** make consequential changes to reflect the change in terminology from *occupational rehabilitation service* to *workplace rehabilitation service*. The amendments flow from amendments to the 1998 Act to provide for the approval (rather than accreditation) of providers of rehabilitation services and are for the purpose of achieving consistency with the *Nationally Consistent Approval Framework for Workplace Rehabilitation Providers*. **Schedule 1 [14]** omits provisions that set a maximum

amount for which an employer is liable for occupational rehabilitation services provided to an injured worker.

Disputes about prospective medical treatment

Schedule 1 [11] provides that the jurisdiction of the Commission with respect to disputes about payment of medical, hospital and rehabilitation expenses extends to disputes about any proposed treatment or service. This will enable the Commission to determine a dispute about whether a treatment or service is reasonably necessary before the treatment or service is provided.

Reimbursement of medical certificate costs

Schedule 1 [15] ensures that the cost of obtaining a permanent impairment medical certificate is paid as part of the worker's claim for permanent impairment compensation so that liability for these costs will be properly assessed in conjunction with settlement of the claim for permanent impairment compensation.

Reimbursement of Insurance Fund—Commission's jurisdiction

Schedule 1 [19] restricts the jurisdiction of the Commission when it determines the liability of an employer or insurer to reimburse the Insurance Fund in respect of liabilities incurred by the Nominal Insurer on behalf of an employer or insurer. The Commission will not have jurisdiction to waive a liability to contribute to the Fund or to limit or otherwise affect any function of the Nominal Insurer to decide whether or not any such liability should be waived.

Retirement age for calculating economic loss

Schedule 1 [20] aligns the maximum age beyond which the earning capacity of a worker is to be disregarded when determining future economic loss with the age set under the *Social Security Act 1991* of the Commonwealth as the age of entitlement to the age pension. This maximum operates for the purposes of awarding damages for future economic loss due to deprivation or impairment of earning capacity or (in the case of an award of damages under the *Compensation to Relatives Act 1897*) loss of expectation of financial support.

Other amendments

Schedule 1 [16]–[18] provide for the automatic indexation of the \$7,500 threshold for appeals against Arbitrator decisions and the limit on interim payment directions for medical expenses compensation. Indexation is on the basis of an index that tracks movements in award rates of pay, which is the same index that is used to automatically index various benefits under the 1987 Act.

Schedule 1 [22] exempts a specialised insurer from the requirement to be authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business if the insurer does not require that authorisation to lawfully carry on the business.

Schedule 1 [21], [23] and [24] provide for the provision of a security bond as a means of satisfying a requirement for the deposit of an amount of money as security by self-insurers, specialised insurers and retro-paid loss employers.

Schedule 1 [25] enacts savings and transitional provisions for various amendments.

Schedule 1 [26] provides for the making of savings and transitional regulations.

Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

Approval of rehabilitation service providers

Schedule 2 [2] provides for the approval (instead of accreditation, as at present) of providers of rehabilitation services for the purposes of employers' return-to-work programs. The amendment is for consistency with the *Nationally Consistent Approval Framework for Workplace Rehabilitation Providers*. **Schedule 2 [1] and [3]–[7]** make consequential amendments.

Payment of lump sum compensation

Schedule 2 [8] prevents a worker from recovering work injury damages until the worker has been paid any permanent impairment and pain and suffering compensation to which the worker is entitled. Section 151A of the 1987 Act prevents the payment of compensation after damages have been recovered. The amendment will prevent a worker from losing an entitlement to compensation by recovering damages before compensation is paid.

Appeal against medical assessment

Schedule 2 [12] and [14] make the following amendments to provisions dealing with appeals against medical assessments:

- (a) An appeal against a medical assessment on the ground of additional relevant information will only be available if the additional information was both not available to and could not reasonably have been obtained by the appellant before the medical assessment. (**Schedule 2 [12]**)
- (b) An appeal against a medical assessment will be limited to a review on the grounds of appeal, to make it clear that the appeal is not a full review of the medical assessment. Provision for receiving fresh evidence on an appeal is clarified by being limited to evidence that was both not available and not reasonably obtainable before the medical assessment. (**Schedule 2 [14]**)

Appeal against decision of Arbitrator

Schedule 2 [15]–[18] make the following amendments to provisions dealing with appeals against decisions of Arbitrators:

- (a) It will be made clear that an appeal against an Arbitrator’s decision is to be limited to a determination of whether there was an error of fact, law or discretion (and to the correction of such an error) and that the appeal is not a review or new hearing. (**Schedule 2 [16]**)
- (b) It will be made clear that an appeal does not stay the operation of a decision for the payment of weekly payments of compensation, but otherwise does operate to stay the decision appealed against. (**Schedule 2 [16]**)
- (c) The Commission’s discretion to admit new evidence on the appeal will be limited to cases where the new evidence was both not available to the appellant and not reasonably obtainable by the appellant before the proceedings concerned, or where failure to admit the new evidence would cause substantial injustice. (**Schedule 2 [17]**)
- (d) The monetary threshold for appeals will be increased to \$7,500 and the existing additional requirement that the amount at issue in the appeal be at least 20% of the amount awarded will be deleted. (**Schedule 2 [15]**)
- (e) The requirement for the leave of the Commission for an appeal will be deleted and it will be made clear that an appeal is automatically available if the monetary threshold and other procedural requirements are met. (**Schedule 2 [15]**)
- (f) An appeal against an interlocutory decision will not be available except with the leave of the Commission and leave will not be able to be granted unless the Commission is satisfied that it is necessary or desirable for the proper and effective determination of the dispute. (**Schedule 2 [15] and [18]**)

Further assessment or reconsideration of medical assessments

Schedule 2 [13] limits provision for referral of a medical assessment for further assessment or reconsideration to cases where there are grounds for appeal, to make it clear that further assessment is an alternative to appeal only where grounds for appeal exist. **Schedule 2 [19]** removes power for the reconsideration of matters by approved medical specialists, to avoid use of the reconsideration power as a means of avoiding the requirements for appeals against medical assessments.

Other amendments

Schedule 2 [9] is consequential on the amendments made by **Schedule 1 [11]** which provide that the jurisdiction of the Commission with respect to disputes about payment of medical, hospital and rehabilitation expenses extends to disputes about any proposed treatment or service.

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Schedule 2 [10] is consequential on the amendments made by **Schedule 1 [16]–[18]** which provide for the automatic indexation of the \$7,500 limit on interim payment directions for medical expenses compensation.

Schedule 2 [11] provides that one or more of the medical practitioners who are appointed as approved medical specialists for the purposes of assessing workers compensation medical disputes may be appointed as a senior approved medical specialist.

First print



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New South Wales

Workers Compensation Legislation Amendment Bill 2010

No. , 2010

A Bill for

An Act to amend workers compensation legislation to make further provision for determination of compensation and work injury damages, workplace rehabilitation, medical assessment, appeals and other matters.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Workers Compensation Legislation Amendment Act 2010</i> .	3 4
2 Commencement	5
(1) This Act commences on a day or days to be appointed by proclamation.	6
(2) A proclamation under this section may appoint a particular time on a day as the time for commencement on that day.	7 8

Schedule 1	Amendment of Workers Compensation Act 1987 No 70	1
		2
[1]	Section 9A No compensation payable unless employment substantial contributing factor to injury	3
	Omit “occupational rehabilitation service” from section 9A (3) (b).	4
	Insert instead “workplace rehabilitation service”.	5
[2]	Section 38A Determination of whether worker seeking suitable employment	7
	Omit “occupational rehabilitation services” from the definition of <i>rehabilitation training</i> in section 38A (7).	8
	Insert instead “workplace rehabilitation services”.	9
[3]	Section 40 Weekly payments during partial incapacity—general	10
	Insert at the end of section 40 (1):	11
	Note. Section 35 limits the maximum weekly payment of compensation under this section.	12
[4]	Section 40 (2)	13
	Omit “(but not exceeding \$1,000)” wherever occurring.	14
[5]	Section 40 (2) and (2A)	15
	Insert at the end of each subsection:	16
	Note. The difference between (a) and (b) is the maximum amount of compensation payable to the worker. It is not a limit on the combined total of compensation and earnings.	17
[6]	Section 40 (7)	18
	Omit “subsection (2)”. Insert instead “subsection (2A)”.	19
[7]	Section 59 Definitions	20
	Omit “occupational rehabilitation service” from the definition of <i>medical or related treatment</i> .	21
	Insert instead “workplace rehabilitation service”.	22
[8]	Section 59, definition of “occupational rehabilitation service”	23
	Omit the definition.	24
		25
		26
		27
		28
		29
		30

[9] Section 59, definition of “workplace rehabilitation service”	1
Insert in alphabetical order:	2
<i>workplace rehabilitation service</i> means any service provided as	3
a workplace rehabilitation service by or on behalf of a provider	4
of rehabilitation services approved under section 52 of the 1998	5
Act.	6
[10] Section 60 Compensation for cost of medical or hospital treatment and rehabilitation etc	7
Omit “occupational” from section 60 (1) (d). Insert instead “workplace”.	8
[11] Section 60 (5)	10
Insert after section 60 (4):	11
(5) The jurisdiction of the Commission with respect to a dispute	12
about compensation payable under this section extends to a	13
dispute concerning any proposed treatment or service and the	14
compensation that will be payable under this section in respect of	15
any such proposed treatment or service. Any such dispute must	16
be referred by the Registrar for assessment under Part 7 (Medical	17
assessment) of Chapter 7 of the 1998 Act, unless the regulations	18
otherwise provide.	19
[12] Section 60A Worker not liable for medical, hospital and rehabilitation charges above applicable rates	20
Omit “an occupational” wherever occurring. Insert instead “a workplace”.	21
[13] Section 63A Rates applicable for workplace rehabilitation services	23
Omit “occupational” wherever occurring in section 63A (1), (2), (5) and (6).	24
Insert instead “workplace”.	25
[14] Section 63A (3) and (4)	26
Omit the subsections.	27
[15] Section 73 Reimbursement for costs of medical certificate and examination	28
Insert after section 73 (2):	29
(3) The following provisions apply to compensation to which a	30
worker is entitled in respect of the obtaining of a permanent	31
impairment medical certificate and any examination required for	32
the certificate:	33
	34

(a)	the compensation is not payable until the claim for the permanent impairment compensation to which the certificate or examination relates is determined,	1 2 3
(b)	a claim for the compensation is to be treated as part of the claim for the permanent impairment compensation to which the certificate or examination relates (and so is subject to the requirements of section 281 of the 1998 Act as to when the claim must be determined),	4 5 6 7 8
(c)	section 279 (Liability to be accepted within 21 days) of the 1998 Act does not apply to the compensation.	9 10
[16]	Part 3, Division 6, heading	11
	Omit the heading. Insert instead:	12
	Division 6 Indexation of certain amounts	13
[17]	Section 79 Definitions	14
	Insert at the end of the definition of <i>adjustable amount</i> :	15
	, and	16
	(c) the amount of \$7,500 specified in sections 297 (2) and 352 (3) of the 1998 Act.	17 18
[18]	Section 79, definition of “base index number”	19
	Renumber paragraph (c) as paragraph (d) and insert as paragraph (c):	20
	(c) in respect of the adjustable amount of \$7,500 specified in sections 297 (2) and 352 (3) of the 1998 Act—the latest index number for the adjustment date of 1 October 2010, and	21 22 23 24
[19]	Section 145 Employer or insurer to reimburse Insurance Fund	25
	Insert after section 145 (4):	26
	(4A) The Commission is not authorised to make a determination that waives the liability of an employer under subsection (1) to reimburse the Insurance Fund or that limits or otherwise affects any function of the Nominal Insurer to decide whether or not any such liability should be waived.	27 28 29 30 31
[20]	Section 151IA Retirement age	32
	Omit “age 65”.	33
	Insert instead “pension age (as defined in the <i>Social Security Act 1991</i> of the Commonwealth for persons other than veterans)”.	34 35

[21] Section 172A Security deposit or guarantee for payment of premium— optional alternative premium calculation method	1 2
Omit section 172A (6). Insert instead:	3
(6) Sections 214–215B apply to and in respect of an amount of money deposited or required to be deposited with the Nominal Insurer under this section as if:	4 5 6
(a) the amount deposited or required were deposited or required pursuant to an obligation imposed under Division 5 (Self-insurers), and	7 8 9
(b) the employer were a self-insurer while the employer holds a policy of insurance in respect of which the amount is held or required to be held on deposit, and	10 11 12
(c) a reference in those provisions to the Authority were a reference to the Nominal Insurer.	13 14
[22] Section 177A Special provisions for specialised insurers	15
Omit section 177A (3) (c). Insert instead:	16
(c) that the applicant is authorised under section 12 of the <i>Insurance Act 1973</i> of the Commonwealth to carry on insurance business in Australia (or does not require such an authorisation to lawfully carry on the insurance business to be carried on pursuant to the licence), and	17 18 19 20 21
[23] Section 182 Matters that may be regulated by conditions of licences	22
Omit section 182 (1) (c). Insert instead:	23
(c) requiring a charge or other security to be taken by the Authority in respect of the assets of an insurer, or otherwise requiring the insurer to provide security, for the purpose of securing the payment of the insurer’s liabilities (including contingent liabilities) for the payment of compensation under this Act.	24 25 26 27 28 29
[24] Section 215B	30
Insert after section 215A:	31
215B Bond as alternative to deposit	32
It is sufficient compliance with a requirement of this Division to deposit an amount of money with the Authority if a bond is provided, on terms acceptable to the Authority, as security for the amount required to be deposited.	33 34 35 36

[25] Schedule 6 Savings, transitional and other provisions	1
Insert as Part 19G:	2
Part 19G Provisions consequent on enactment of Workers Compensation Legislation Amendment Act 2010	3 4 5
1 Definition	6
In this Part:	7
<i>2010 amending Act</i> means the <i>Workers Compensation Legislation Amendment Act 2010</i> .	8 9
2 Weekly payments during partial incapacity	10
An amendment made by the 2010 amending Act to section 40 of the 1987 Act applies only to compensation payable pursuant to a claim for compensation made after the commencement of the amendment (and so applies even if the injury concerned was received before that commencement).	11 12 13 14 15
3 Retirement age	16
The amendment made by the 2010 amending Act to section 151IA of the 1987 Act does not apply to an award of damages in proceedings commenced before the commencement of the amendment.	17 18 19 20
4 Rates applicable for occupational rehabilitation services	21
The repeal by the 2010 amending Act of section 63A (3) and (4) of the 1987 Act does not affect a claim for an amount payable under that section made before the commencement of the repeal and that section and regulations under that section continue to apply in respect of such a claim as if the provisions had not been repealed.	22 23 24 25 26 27
5 Reimbursement for costs of medical certificate and examination	28
Section 73 (3) of the 1987 Act extends to compensation payable in respect of the obtaining of a permanent impairment medical certificate and any examination required for the certificate before the commencement of that subsection.	29 30 31 32
6 Lump sum compensation to be paid before damages recovered	33
Section 280B of the 1998 Act extends to a claim for damages that is pending immediately before the commencement of that section	34 35

	(but does not apply to a claim finally determined or settled before that commencement).	1 2
7	Appeal against medical assessment	3
	An amendment made by the 2010 amending Act to section 327 or 328 of the 1998 Act 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.	4 5 6 7 8 9
8	Appeal against decision of Commission constituted by Arbitrator	10
	(1) An amendment made by the 2010 amending Act to section 352 of the 1998 Act does not apply to an appeal when the decision appealed against is a decision made before the commencement of the amendment, except as provided by subclause (2).	11 12 13 14
	(2) Section 352 (5A) of the 1998 Act is for the removal of doubt and extends to appeals pending on the commencement of that provision.	15 16 17
9	Adjustment of maximum interim medical expenses payment and appeal threshold	18 19
	For the purposes of the operation of Division 6 (Indexation of certain amounts) of Part 3 of the 1987 Act in relation to an adjustable amount in section 297 (2) or 352 (3) of the 1998 Act, 1 October 2010 is not an adjustment date and the first adjustment date is 1 April 2011. Accordingly, the first adjustment under that Division of those adjustable amounts is to be the adjustment provided for under that Division on and from 1 April 2011.	20 21 22 23 24 25 26
10	Coal miners	27
	(1) The amendments made by the 2010 amending Act do not apply to or in respect of coal miners, and this Act and the 1998 Act (and the regulations under those Acts) apply to and in respect of coal miners as if those amendments had not been enacted.	28 29 30 31
	(2) In this clause, <i>coal miner</i> means a worker employed in or about a mine.	32 33
[26]	Schedule 6, Part 20	34
	Insert at the end of clause 1 (1):	35
	<i>Workers Compensation Legislation Amendment Act 2010</i>	36

Schedule 2	Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86	1
		2
		3
[1] Section 23 Specific functions		4
	Omit “accredited rehabilitation providers” from section 23 (1) (e).	5
	Insert instead “approved rehabilitation providers”.	6
[2] Section 52 Workplace rehabilitation		7
	Omit section 52 (4) (c). Insert instead:	8
	(c) may provide for the approval of providers of rehabilitation services for the purposes of return-to-work programs and may require employers to use the services of approved providers in connection with the program, and	9
		10
		11
		12
[3] Section 64 Notice of incapacity, medical etc treatment and damage to property		13
	Omit “occupational” from section 64 (1) (b). Insert instead “workplace”.	14
		15
[4] Section 65 Making a claim for compensation		16
	Omit “occupational” from section 65 (20). Insert instead “workplace”.	17
		18
[5] Section 257 Notice of incapacity, medical etc treatment and damage to property		19
	Omit “occupational” from section 257 (1) (b). Insert instead “workplace”.	20
		21
[6] Section 260 How a claim is made		22
	Omit “occupational” from section 260 (3). Insert instead “workplace”.	23
		24
[7] Section 270 Obligations of worker to provide authorisations and medical evidence		25
	Omit “occupational” from section 270 (1) (b). Insert instead “workplace”.	26
		27
[8] Section 280B		28
	Insert after section 280A:	29
280B Lump sum compensation to be paid before damages recovered		30
	(1) An injured worker cannot recover damages in respect of an injury from the employer liable to pay compensation under this Act in respect of the injury unless and until any permanent impairment	31

	compensation and pain and suffering compensation to which the worker is entitled in respect of the injury has been paid.	1 2
(2)	This section does not prevent a claim for damages from being made before any permanent impairment compensation and pain and suffering compensation to which the worker is entitled in respect of the injury has been paid.	3 4 5 6
	Note. This section ensures that an injured worker receives the compensation to which the worker is entitled before damages are recovered (because section 151A of the 1987 Act would prevent the payment of compensation after damages are recovered).	7 8 9 10
[9]	Section 289 Restrictions as to when dispute can be referred to Commission	11 12
	Insert after section 289 (2):	13
(2A)	Subsection (2) does not prevent the referral to the Commission of a dispute about whether any proposed treatment or service is reasonably necessary as a result of an injury.	14 15 16
	Note. Section 60 of the 1987 Act provides for such a dispute to be referred to the Commission.	17 18
[10]	Section 297 Directions for interim payment of weekly payments or medical expenses compensation	19 20
	Insert after section 297 (2):	21
	Note. The amount of \$7,500 is subject to adjustment under Division 6 of Part 3 of the 1987 Act.	22 23
[11]	Section 320 Appointment of approved medical specialists	24
	Insert after section 320 (2):	25
(2A)	One or more approved medical specialists may be appointed as a senior approved medical specialist, either by the instrument of appointment of the approved medical specialist or by a later instrument executed by the President.	26 27 28 29
[12]	Section 327 Appeal against medical assessment	30
	Omit section 327 (3) (b). Insert instead:	31
(b)	availability of additional relevant information (but only if the additional information was not available to, and could not reasonably have been obtained by, the appellant before the medical assessment appealed against),	32 33 34 35

[13] Section 327 (6)	1
Omit the subsection. Insert instead:	2
(6) The Registrar may refer a medical assessment for further assessment under section 329 as an alternative to an appeal against the assessment (but only if the matter could otherwise have proceeded on appeal under this section).	3 4 5 6
Note. Section 329 also allows the Registrar to refer a medical assessment back to the approved medical specialist for reconsideration (whether or not the medical assessment could be appealed under this section).	7 8 9 10
[14] Section 328 Procedure on appeal	11
Omit section 328 (2) and (3). Insert instead:	12
(2) The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made. The WorkCover Guidelines can provide for the procedure on an appeal.	13 14 15 16
(3) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the medical assessment appealed against may not be given on an appeal unless the evidence was not available to the appellant before that medical assessment and could not reasonably have been obtained by the appellant before that medical assessment.	17 18 19 20 21 22
[15] Section 352 Appeal against decision of Commission constituted by Arbitrator	23 24
Omit section 352 (1)–(3). Insert instead:	25
(1) A party to a dispute in connection with a claim for compensation may appeal to the Commission constituted by a Presidential member against a decision in respect of the dispute by the Commission constituted by an Arbitrator.	26 27 28 29
(2) An appeal is to be made by application to the Registrar. The appeal is not to proceed unless the Registrar is satisfied that the procedural requirements of this section and any applicable Rules and regulations as to the making of an appeal have been complied with. The Registrar is not required to be satisfied as to the substance of the appeal.	30 31 32 33 34 35
(3) There is no appeal under this section unless the amount of compensation at issue on the appeal is at least \$7,500 (or such other amount as may be prescribed by the regulations). If the amount of \$7,500 is adjusted by the operation of Division 6 of	36 37 38 39

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Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

	Part 3 of the 1987 Act, the adjustment does not apply to an appeal lodged before the adjustment takes effect.	1 2
(3A)	There is no appeal under this section against an interlocutory decision except with the leave of the Commission. The Commission is not to grant leave unless of the opinion that determining the appeal is necessary or desirable for the proper and effective determination of the dispute.	3 4 5 6 7
[16]	Section 352 (5) and (5A)	8
	Omit section 352 (5). Insert instead:	9
(5)	An appeal under this section is limited to a determination of whether the decision appealed against was or was not affected by any error of fact, law or discretion, and to the correction of any such error. The appeal is not a review or new hearing.	10 11 12 13
(5A)	An appeal under this section stays the operation of the decision appealed against pending the determination of the appeal. However, an appeal does not stay or otherwise affect the operation of a decision as to weekly payments of compensation and weekly payments of compensation remain payable despite any appeal.	14 15 16 17 18 19
[17]	Section 352 (6)	20
	Insert “The Commission is not to grant leave unless satisfied that the evidence concerned was not available to the appellant, and could not reasonably have been obtained by the appellant, before the proceedings concerned or that failure to grant leave would cause substantial injustice in the case.” at the end of the subsection.	21 22 23 24 25
[18]	Section 352 (8)	26
	Omit “, but does not include any award, order, determination, ruling or direction of an interlocutory nature prescribed by the regulations”.	27 28
[19]	Section 378	29
	Omit the section. Insert instead:	30
378	Reconsideration of decisions of Registrar or Appeal Panel	31
(1)	The Registrar or an Appeal Panel may reconsider any matter that has been dealt with by the Registrar or an Appeal Panel, respectively, and rescind, alter or amend any decision previously made or given.	32 33 34 35

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Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86 Schedule 2

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|-----|--|----------------------------|
| (2) | Without limiting subsection (1), if the Registrar is satisfied that there is an obvious error in the text of a decision, the Registrar may alter the text of the decision to correct the error. | 1
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| (3) | Without limiting subsection (1), if an Appeal Panel is satisfied that its decision or any medical assessment certificate it has issued contains an obvious error, the Appeal Panel concerned may correct that error and, if necessary, issue a replacement medical assessment certificate (which is to prevail over any previous certificate). | 4
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| (4) | The reconsideration of a matter that is in response to an application for reconsideration must be completed within 2 months after the application is received. | 10
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| (5) | This section does not affect any other power under this Act or the 1987 Act to review or amend a decision. | 13
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