

Workers Compensation Amendment Act 2015

No 18

[2015-18]



New South Wales

Status Information

Currency of version

Historical version for 17 October 2015 to 4 December 2015 (accessed 3 May 2024 at 23:33)

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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File last modified 17 October 2015

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Workers Compensation Amendment Act 2015 No 18



New South Wales

An Act to amend the [Workers Compensation Act 1987](#) to make further provision with respect to the reform of the NSW workers compensation scheme.

1 Name of Act

This Act is the [Workers Compensation Amendment Act 2015](#).

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) The following provisions of this Act commence on the date of assent to this Act:
 - (a) Schedule 2 [1],
 - (b) Schedule 3 [1]–[3],
 - (c) Schedule 6.

Schedule 1 (Repealed)

Schedule 2 Amendment of [Workers Compensation Act 1987](#) No 70—weekly payments of compensation

[1] (Repealed)

[2] Section 32A, definition of “seriously injured worker”

Omit “**seriously injured worker**” from the definition.

Insert instead “**worker with highest needs**”, and transfer the definition to the end of the section.

[3] Section 32A, definition of “worker with high needs”

Insert in alphabetical order:

worker with high needs means a worker whose injury has resulted in permanent impairment and:

- (a) the degree of permanent impairment has been assessed for the purposes of Division 4 to be more than 20%, or
- (b) an assessment of the degree of permanent impairment is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, or

Note—

Paragraph (b) no longer applies once the degree of permanent impairment has been assessed.

- (c) the insurer is satisfied that the degree of permanent impairment is likely to be more than 20%,

and includes a worker with highest needs.

[4] Section 38 Special requirements for continuation of weekly payments after second entitlement period (after week 130)

Insert “(other than a worker with high needs)” after “A worker” in section 38 (3).

[5] Section 38 (3A)

Insert after section 38 (3):

- (3A) A worker with high needs who is assessed by the insurer as having current work capacity is entitled to compensation after the second entitlement period only if the worker has applied to the insurer in writing (in the form approved by the Authority) no earlier than 52 weeks before the end of the second entitlement period for continuation of weekly payments after the second entitlement period.

[6] Sections 38 (5) and 44A (4)

Omit “seriously injured worker” wherever occurring.

Insert instead “worker with highest needs”.

[7] Section 38A

Insert after section 38:

38A Special provision for workers with highest needs

- (1) If the determination of the amount of weekly payments of compensation

payable to a worker with highest needs in accordance with this Subdivision results in an amount that is less than \$788.32, the amount is to be treated as \$788.32.

- (2) If the amount specified in subsection (1) is varied by operation of Division 6A, a weekly payment of compensation payable to a worker with highest needs before the date on which the variation takes effect is, for any period of incapacity occurring on and after that date, to be determined by reference to that amount as so varied.

[8] Section 43 Work capacity decisions by insurers

Omit “section 44” from section 43 (1). Insert instead “section 44BB”.

[9] Section 44 Review of work capacity decisions

Omit “(an *internal review*)” from section 44 (1) (a).

[10] Section 44 (2A)

Insert after section 44 (2):

- (2A) The insurer is to notify the worker of the decision on an internal review as soon as practicable after the review is conducted.

[11] Section 44 (4) and (6)

Omit the subsections.

[12] Section 44 (5)

Omit “the subject of a review under this section” Insert instead “stayed”.

[13] Section 44

Transfer section 44 (renumbered as section 44BB) to Subdivision 3A of Division 2 of Part 3 (as inserted by item [14]) and insert it after section 44BA.

[14] Part 3, Division 2, Subdivision 3A

Insert after section 44B:

Subdivision 3A Review of work capacity decisions

44BA Definitions

In this Subdivision:

internal review means a review by an insurer under section 44BB.

original decision means a work capacity decision that is the subject of a review under section 44BB.

required period of notice, in relation to the discontinuation of payment of compensation to a worker, or the reduction of the amount of compensation payable to the worker, means the required period of notice for the purposes of section 54 with respect to the discontinuation or reduction.

review decision means a work capacity decision made by an insurer as a result of a review under section 44BB.

44BC Stay of work capacity decisions

- (1) A review of a work capacity decision in respect of a worker operates to stay the decision that is the subject of the review and prevents the taking of action by an insurer based on the decision while the decision is stayed.
- (2) However, a review operates to stay the decision that is the subject of the review only if the application for review is made by the worker within 30 days after the day on which the worker is notified (or required under section 44BB to be notified) of:
 - (a) the work capacity decision to be reviewed (in the case of an application for internal review), or
 - (b) the decision on the internal review (in the case of an application for review by the Authority), or
 - (c) the findings of the merit review (in the case of an application for review by the Independent Review Officer).
- (3) A stay operates from the time the application for review is made until the worker is notified of the findings of the review (or the application for review is withdrawn).

Note—

After a stay is lifted, weekly payments of compensation must not be discontinued or reduced in accordance with the original decision (or any decision resulting from the review of that decision) until the required period of notice under section 54 has expired. See sections 44BD and 44BE for the effect of a review on that notice period.

- (4) A stay of an original decision to discontinue, or reduce an amount of, compensation does not operate to extend the required period of notice with respect to the discontinuation or reduction.

Note—

In some circumstances, a new period of notice will commence when a worker is notified of a discontinuation or reduction resulting from a review. See section 44BD.

44BD Effect of review decision on notice period

- (1) In the application of section 54 to a discontinuation, or reduction of the amount, of payments of compensation as a result of a review decision (whether or not the review decision is less favourable to the worker than the original decision):
 - (a) no regard is to be had to any period of notice given to the worker in respect of any discontinuation or reduction before the date on which the worker is notified of the review decision, and
 - (b) the required period of notice commences on that date.
- (2) This section does not apply to a discontinuation or reduction as a result of a review decision that affirms an original decision with respect to the discontinuation or reduction.

Note—

See section 44BE for the effect of the affirmation of an original decision on the required period of notice.

44BE Effect of affirmation or withdrawal on notice period

- (1) The required period of notice with respect to a discontinuation or reduction of compensation is not affected by:
 - (a) a review decision that affirms an original decision with respect to the discontinuation or reduction, or
 - (b) the withdrawal of an application for review under section 44BB of the original decision with respect to the discontinuation or reduction.
- (2) Accordingly, the original decision (and any affirming review decision) takes effect on the later of:
 - (a) the date on which the worker is notified of the review decision, or withdraws the application for review, or
 - (b) the date on which the required period of notice in respect of the discontinuation or reduction to which the original decision relates expires.

44BF Legal costs

- (1) A legal practitioner is not entitled to be paid or recover any amount for a legal service provided to a worker or an insurer in connection with a review if:
 - (a) the review is of a prescribed class, or
 - (b) the regulations do not fix any maximum costs for providing the legal service to the worker or insurer in connection with the review.

- (2) Despite section 341 of the 1998 Act, the regulations may provide that, in prescribed circumstances, a party to a review under this Subdivision (other than an internal review) is to bear the other party's costs in connection with the review.

[15] (Repealed)

[16] Section 54 Notice required before termination or reduction of payment of weekly compensation

Insert at the end of the section:

Note—

See sections 44BD and 44BE for the effect of a review under section 44BB on the required period of notice.

[17] Section 58A

Insert after section 58:

58A Regulations

The regulations may make provision for or with respect to the following:

- (a) varying the method by which pre-injury average weekly earnings are to be calculated under this Subdivision in respect of a worker or class of workers,
- (b) prescribing a benefit, or class of benefit, as a non-pecuniary benefit for the purposes of this Division,
- (c) prescribing a payment, allowance, commission or other amount, or class of amount, as a base rate of pay exclusion for the purposes of this Division.

[18] (Repealed)

[19] Section 82BA

Insert after section 82B:

82BA Indexation—compensation amount for workers with highest needs

- (1) The amount **A** is to be varied on each review date, in accordance with the formula:

$$A \times \frac{B}{C}$$

where:

A is the amount of \$788.32 specified in section 38A or, if that amount has been varied in accordance with this section, that amount as last so varied.

B is:

- (a) the CPI for the December quarter immediately prior to the review date when the review date is 1 April, or
- (b) the CPI for the June quarter immediately prior to the review date when the review date is 1 October.

C is:

- (a) the CPI for the June quarter immediately prior to the review date when the review date is 1 April, or
- (b) the CPI for the December quarter immediately prior to the review date when the review date is 1 October.

(2) In this section:

CPI means the consumer price index (All Groups Index) for Sydney issued by the Australian Statistician.

review date means 1 April and 1 October in each year.

- (3) The Minister is to notify, by order published on the NSW legislation website on or before each review date, the amount that is to apply as the amount specified in section 38A as varied in accordance with this section.
- (4) A notification published on the NSW legislation website after a review date for the purposes of the variation required for that review date under this section has effect as if published before that review date.

[20] Section 82C Indexation—no reduction

Omit “or 82B”. Insert instead “, 82B or 82BA”.

Schedule 3 Amendment of [Workers Compensation Act 1987 No 70](#)—medical and related expenses

[1]–[3] (Repealed)

[4] Section 59A

Omit the section. Insert instead:

59A Limit on payment of compensation

- (1) Compensation is not payable to an injured worker under this Division in respect of any treatment, service or assistance given or provided after the expiry of the compensation period in respect of the injured worker.
- (2) The compensation period in respect of an injured worker is:
 - (a) if the injury has resulted in a degree of permanent impairment assessed as provided by section 65 to be 10% or less, or the degree of permanent impairment has not been assessed as provided by that section, the period of 2 years commencing on:
 - (i) the day on which the claim for compensation in respect of the injury was first made (if weekly payments of compensation are not or have not been paid or payable to the worker), or
 - (ii) the day on which weekly payments of compensation cease to be payable to the worker (if weekly payments of compensation are or have been paid or payable to the worker), or
 - (b) if the injury has resulted in a degree of permanent impairment assessed as provided by section 65 to be more than 10% but not more than 20%, the period of 5 years commencing on:
 - (i) the day on which the claim for compensation in respect of the injury was first made (if weekly payments of compensation are not or have not been paid or payable to the worker), or
 - (ii) the day on which weekly payments of compensation cease to be payable to the worker (if weekly payments of compensation are or have been paid or payable to the worker).
- (3) If weekly payments of compensation become payable to a worker after compensation under this Division ceases to be payable to the worker, compensation under this Division is once again payable to the worker but only in respect of any treatment, service or assistance given or provided during a period in respect of which weekly payments are payable to the worker.
- (4) For the avoidance of doubt, weekly payments of compensation are payable to a worker for the purposes of this section only while the worker satisfies the requirement of incapacity for work and all other requirements of Division 2 that the worker must satisfy in order to be entitled to weekly payments of compensation.
- (5) This section does not apply to a worker with high needs (as defined in Division 2).

- (6) This section does not apply to compensation in respect of any of the following kinds of medical or related treatment:
 - (a) the provision of crutches, artificial members, eyes or teeth and other artificial aids or spectacles (including hearing aids and hearing aid batteries),
 - (b) the modification of a worker's home or vehicle,
 - (c) secondary surgery.
- (7) Surgery is **secondary surgery** if:
 - (a) the surgery is directly consequential on earlier surgery and affects a part of the body affected by the earlier surgery, and
 - (b) the surgery is approved by the insurer within 2 years after the earlier surgery was approved (or is approved later than that pursuant to the determination of a dispute that arose within that 2 years).
- (8) This section does not affect the requirements of section 60 (including, for example, the requirement for the prior approval of the insurer for secondary surgery).

[5] (Repealed)

Schedule 4 Amendment of **Workers Compensation Act 1987 No 70**—return to work assistance

Part 3, Division 3A

Insert after Division 3 of Part 3:

Division 3A Compensation for return to work assistance

64B Workers returning to work with new employer

- (1) In this section:

group means a group constituted under Division 2B of Part 7, but does not include any member of the group in respect of whom a determination under section 175E is in force.

new employer, in relation to an injured worker, means any employer other than:

- (a) the pre-injury employer of the worker, or
- (b) an employer who is a member of the same group as the pre-injury employer

of the worker.

pre-injury employer, in relation to an injured worker, means the employer out of or in the course of employment with whom the injury arose.

work assistance means the provision of education or training, transport, child care, clothing, equipment or any similar service or assistance.

- (2) This section applies to an injured worker who:
 - (a) as a result of the injury, is not able to return to work with his or her pre-injury employer, and
 - (b) accepts an offer of employment with a new employer.
- (3) The pre-injury employer of a worker to whom this section applies is liable to pay, subject to and in accordance with the regulations, compensation for the cost of work assistance provided to assist the worker to return to work with a new employer.
- (4) An employer is liable to pay compensation under this section in addition to any other compensation under this Act.
- (5) The maximum amount for which an employer is liable under this section in respect of the injury concerned is \$1,000.
- (6) Without limiting subsection (3), the regulations may make provision for or with respect to the following:
 - (a) limiting the classes of work assistance the employer is liable to pay the cost of under this section,
 - (b) otherwise limiting the circumstances in which an employer is liable to pay for the cost of work assistance under this section.

64C Workers receiving weekly payments

- (1) This section applies to an injured worker if:
 - (a) the injury has resulted in a degree of permanent impairment assessed for the purposes of Division 4 to be more than 20%, and
 - (b) a weekly payment of compensation has been paid or payable to the worker in respect of the injury for an aggregate period of more than 78 weeks.
- (2) The employer of a worker to whom this section applies is liable to pay, subject to and in accordance with the regulations, compensation for the cost of education or training provided to assist the worker to return to work.

- (3) An employer is liable to pay compensation under this section in addition to any other compensation under this Act.
- (4) The maximum amount for which an employer is liable under this section in respect of the injury concerned is \$8,000.
- (5) Without limiting subsection (2), the regulations may make provision for or with respect to the following:
 - (a) limiting the classes of education or training the employer is liable to pay the cost of under this section,
 - (b) otherwise limiting the circumstances in which an employer is liable to pay for the cost of education or training under this section.

Schedules 5, 6 (Repealed)