

# Workers Compensation Amendment Act 2015 No 18

[2015-18]



New South Wales

## Status Information

### Currency of version

Historical version for 5 December 2015 to 29 April 2016 (accessed 23 November 2024 at 2:54)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### 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

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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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## Schedule 1 (Repealed)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### [1]-[13] (Repealed)

### [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], [16] (Repealed)**

**[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]-[20] (Repealed)**

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

**[1]-[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)**