

# Workers Compensation Legislation Amendment Act 2012 No 53

[2012-53]



New South Wales

## Status Information

### Currency of version

Current version for 2 October 2012 to date (accessed 18 May 2024 at 23:58)

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—

- **See also**  
[State Insurance and Care Legislation Amendment Bill 2022](#)
- **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 Legislation Amendment Act 2012 No 53



New South Wales

An Act to amend the *Workers Compensation Act 1987* and other Acts with respect to the reform of the NSW workers compensation scheme.

## 1 Name of Act

This Act is the *Workers Compensation Legislation Amendment Act 2012*.

## 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:
  - (a) Schedule 2 (Amendments relating to lump sum compensation),
  - (b) Schedule 3 (Amendments relating to damages for nervous shock),
  - (c) Schedule 4 (Amendments relating to medical and related expenses), except Schedule 4 [1],
  - (d) Schedule 5 (Amendments relating to journey claims),
  - (e) Schedule 6 (Amendments relating to heart attack and stroke),
  - (f) Schedule 7 (Amendments relating to disease injuries),
  - (g) Schedule 9 (Amendments relating to insurer licensing and transfer of claims),
  - (h) Schedule 12 (Amendments relating to savings and transitional provisions).

### Note—

Schedule 12 provides for some amendments to have operation on and from 19 June 2012.

## Schedules 1-7 (Repealed)

## **Schedule 8 Amendments relating to commutation of compensation**

### **Amendment of [Workers Compensation Act 1987 No 70](#)**

#### **[1] Section 87EA Preconditions to commutation**

Insert after section 87EA (1):

- (1A) Despite subsection (1), a liability in respect of an injury may be commuted to a lump sum under this Division in a particular case if the Authority is satisfied and certifies to the effect that:
- (a) the case is of a class that is prescribed by the regulations as a class to which this subsection applies, and
  - (b) the circumstances of the case satisfy any requirements prescribed by the regulations as requirements that must be satisfied for the purposes of this subsection, and
  - (c) unless the regulations otherwise provide, the lump sum to which the liability will be commuted is not inadequate and not excessive.
- (1B) In considering whether the lump sum to which a liability will be commuted is not inadequate and not excessive, the Authority may have regard to the following matters:
- (a) any dispute as to liability to pay compensation under the Workers Compensation Acts,
  - (b) the injury, the age of the worker, the general health of the worker, and the occupation of the worker at the time of the occurrence of the injury,
  - (c) the worker's diminished ability to compete in an open labour market,
  - (d) other benefits that the worker may be entitled to from any other source.

#### **[2] Section 87EA (6)**

Insert after section 87EA (5):

- (6) The WorkCover Guidelines may make provision for the procedure for applying for certification by the Authority under subsection (1) or (1A) and the information and documents to be provided in support of such an application.

#### **[3] Section 87F Commutation by agreement**

Insert after section 87F (2):

- (2A) Compliance with subsection (2) is not required if the commutation agreement contains a provision in which the employer or insurer certifies that it is satisfied that the worker has waived the right to obtain independent legal advice and independent financial advice before entering into the agreement.
- (2B) The regulations may require the provision of independent financial advice to a worker (at the expense of the insurer) before the worker enters into a commutation agreement and any such requirement applies despite any other provision of this section.

**[4] Section 87H Registration of commutation agreements**

Omit section 87H (2). Insert instead:

- (2) The Registrar must refuse to register a commutation agreement unless satisfied that the Authority has certified as provided by section 87EA (1) or (1A) in respect of the agreement.

**Schedules 9-12 (Repealed)**