

FREQUENTLY ASKED QUESTIONS

Workers compensation changes

Do the changes apply to workers who were injured before the reforms come into force?

Yes - Special arrangements will apply to people who are already receiving weekly payments immediately prior to commencement of the new arrangements. The changes depend on the length of time people have been receiving payments and their level of work capacity.

Injured workers should refer to the WorkCover website or call 13 10 50 for detailed information.

Some features of the special transitional arrangements are:

- during the first 26 weeks of incapacity payments, the amount paid will be the same as under the existing rules;
- claimants who have already received 26 weeks of payments, and have an ongoing entitlement, will be paid according to a transitional rate that is significantly more than the current basic rate of payment; and
- existing weekly payment rules will continue to apply until the person has undergone an individual work capacity assessment. Due to the large number of people receiving payments, it may take more than 12 months for all existing claimants to undergo a work capacity assessment.

Injured workers will be given three months' notice of any changes to their weekly benefits due to the new laws. The most seriously injured workers will not be subject to work capacity assessments unless they wish to have one.

Will my weekly benefits cease?

The Government is still deciding when the changes to weekly benefit payments will begin. The changes will, however, be introduced gradually.

The existing weekly payment rules will continue to apply until the person has undergone an individual work capacity assessment. Due to the large number of people receiving payments, it may take more than 12 months for all existing claimants to undergo a work capacity assessment. Within three months of undergoing the work capacity assessment, the worker's entitlement will be recalculated based on the new rules.

What will happen to workers whose claims are more than five years old?

Workers with claims more than five years old will be entitled to a further five years of weekly benefit payments under the new scheme, providing they are unable to work, or are able to work and are working 15 or more hours a week

There will be no time limit on benefits for seriously injured workers who have been assessed as having a level of permanent impairment of over 20 per cent except for reaching the Commonwealth retirement age, provided they have a continuing total incapacity to work.

New Claims: How will the new benefits scale apply?

These arrangements will apply to new incapacity claims (ie claims not receiving benefits on the day of commencement)

Total incapacity

During the first 13 weeks of incapacity, workers who are totally unfit for all work will receive up to 95 per cent of their pre-injury average weekly earnings. From weeks 14 to 130, workers who are assessed as being unable to work will receive up to 80 per cent of their pre-injury average weekly earnings.

Many long-term claimants who are totally unfit for all work will be better off as they will receive up to 80 per cent of their pre-injury earnings up to week 130 rather than the current rate of \$432.50 which applies after the first 26 weeks.

Partial incapacity

Workers who have a partial incapacity and are able to work during the 13 weeks after a claim is made will receive up to 95 per cent of their pre-injury average weekly earnings. This amount will comprise the actual wages they are earning and a top-up compensation payment.

Workers who have returned to work for at least 15 hours per week will receive a top-up to of up to 95 per cent of their pre-injury average weekly earnings for the first 130 weeks, after which the rate will be 80 per cent of pre-injury average weekly earnings.

Workers who can work but who are working fewer than 15 hours per week from week 14 to 130 will receive up to 80 per cent of their pre-injury average weekly earnings. This amount will comprise the actual wages they are earning and a top-up benefit.

If a worker who has work capacity is not working at least 15 hours per week by the end of the 130-week period, entitlement to weekly benefits will cease. However, workers who have no work capacity will continue to receive benefits of up to 80 per cent of their pre-injury average weekly earnings.

How does this affect the medical cap on benefits?

Payment of compensation for medical expenses will be limited to a period of 12 months after a claim for compensation is made, or 12 months after weekly payments of compensation cease. For existing claims the 12 month period will commence from the date the change in the law comes into force – that date has not yet been determined.

How will the new amendments affect new worker's compensation claims?

All new claims will have the new weekly and medical benefit structure applied.

What is a work capacity assessment?

A work capacity assessment is an assessment that reviews a worker's capacity for work. It is a multi-disciplinary review that takes into account the worker's functional, vocational and medical capacity and determines whether the worker is able to return to employment. A work capacity decision can be made without an assessment.

At what point during the life of a claim will a claimant be required to undergo a capacity assessment?

Injured workers receiving weekly benefits are required to undertake work capacity assessments throughout the life of their claim, and at least once every two years. Generally, capacity assessments will commence once the worker has received 78 weeks of weekly benefits with a view for a decision on capacity for work to be completed by 130 weeks of benefits.

Workers with a significant injury, that is over 30 per cent whole person impairment, will not be required to have a work capacity assessment. However, those workers may request to undergo a capacity assessment should they wish to explore return to work options.

What will happen as a result of the capacity assessment?

If a worker is found to have no capacity for work, the worker will continue to receive benefits. If a worker is found to have capacity to work and is working 15 hours a week or more, they will be eligible for top-up benefits. If a worker who has work capacity is not working at least 15 hours per week by the end of the 130-week period, entitlement to weekly benefits will cease

If the worker has over 30 per cent whole person impairment, no capacity assessment is necessary and that worker may continue to receive benefits. Should a worker be found to have no current capacity for work, but a whole person impairment of 30 per cent or less, they will be required to undertake a further work capacity assessments in two years time or as required.

How long will it take for work capacity assessments to be undertaken?

WorkCover is taking steps to ensure work capacity assessments are conducted as soon as possible and will be working closely with the insurers.

What if I don't agree with the outcome of a work capacity assessment?

In the first instance, a worker can request an internal review by the insurer. Should the worker not be satisfied with the outcome of the review, they can then request a review of the decision by WorkCover. Following this, the worker can apply to the WorkCover Independent Review Officer, but only if the decision has been first reviewed by the insurer and WorkCover.

Will workers who have a total incapacity 26 weeks after their injury date be any better off under the new reforms?

Yes. Workers with a total incapacity post 26 weeks are currently paid at the statutory rate of \$432.50 per week, with allowances for dependents. Under the reforms, these same workers will be paid a transitional rate of \$725 per week if they are found to have a total incapacity following assessment by their insurer.

Do seriously injured workers need to have a work capacity assessment?

Seriously injured workers whose whole person impairment is more than 30 per cent will not be subject to work capacity assessments by insurers unless the worker requests a capacity assessment.

Will seriously injured workers be better off financially?

Seriously injured workers whose whole person impairment is more than 30 per cent can move from the statutory rate of \$432.50 per week, to the transitional rate of \$725 per week. This will take place as soon as practicable. WorkCover is taking steps to apply the new benefits to these workers as soon as possible.

What happens to claims lodged for Section 66 and 67 prior to the 19th June 2012?

To make a claim for lump sum compensation under section 66 and 67 of the old worker's compensation legislation, injured workers must have formally lodged a claim before 19 June 2012.

A worker who lodged such a claim prior to 19 June 2012 will be able to claim benefits for permanent impairment and pain and suffering under the old arrangements, if they satisfy the requirements of section 66 and 67 of the *Workers Compensation Act 1987* before they were amended by the 2012 amendments.

Should a claim for benefits under section 66 and 67 lump sum payment be made on or after 19 June 2012, the new amendments will be applicable to the claim.

Are there any exemptions?

Following an amendment in Parliament to the *Workers Compensation Legislation Amendment Act 2012*, firefighters and paramedics have been exempted from the reforms to NSW worker's compensation laws.

Exclusions made for police officers and coal miners maintain the current position under the *Workers Compensation and Death and Disability Scheme* and *Coal Mines Insurance* legislation respectively. Volunteers continue to be covered for workers compensation purposes under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

Can an injured worker claim legal costs?

This provision is the result of an amendment to the Bill. It appears this change will mean anyone taking a worker's compensation dispute to the Workers Compensation Commission will need to pay their own legal costs. A decision on its commencement date has not been made yet.

Will worker's compensation premiums still be increased?

The Government has accepted the advice of the WorkCover Board that a premium increase of 28 per cent, recommended by the board before the legislation was passed, is not necessary.

The target premium collection rate will remain at 1.68 per cent. This means that employers who have not had major change in their business, for example growth in wages or expansion into new industries or poor claims experience, will not experience an increase in their worker's compensation premiums in 2012/13.

Before any future premium reductions can be considered, the independent scheme actuary must advise that the scheme has returned to some financial stability. There will need to be careful monitoring until the changes are implemented and the impact of any benefit system changes under the new scheme emerges.

Are journey claims maintained?

The new arrangements, which apply to journey claims where the injury is received on or after 19 June 2012, mean that coverage will only be available where there is substantial connection between the person's employment and the incident out of which the injury arose.

Workers who are injured in motor vehicle accidents while travelling between their workplace and home may be entitled to compensation under the Compulsory Third Party Insurance (CTP) Scheme. Information on CTP entitlements is available on the Motor Accidents Authority website at www.maa.nsw.gov.au

What assistance is available to a family member or colleague following the death of a worker?

Following the death of a worker the Worker's Compensation Scheme already pays generous benefits including:

- an indexed lump sum (currently \$481,950) payable to financial dependents, or the deceased worker's estate if there are no dependents;
- indexed weekly payments for dependent children (currently \$122.50 per child per week); and
- funeral expenses (\$9,000).

WorkCover also has a Counselling and Liaison Service to provide grief and bereavement support.

Under the new arrangements, family members of deceased or injured workers will no longer be able to make nervous shock claims on the NSW workers compensation scheme for a work related incident.

The new arrangements apply to claims for damages where court proceedings were commenced on or after 19 June 2012. Where court proceedings were commenced prior to 19 June 2012, those proceedings will continue without change.

Workers who witness the workplace death of a colleague and suffer psychological injury will remain able to make a claim.

What is WorkCover doing to ensure the scheme improves?

WorkCover has initiated a variety of measures to increase scheme efficiency, including:

- a review of the incentives paid to insurers and the administration costs;
- increased subsidies and incentives for employers to employ workers who cannot return to work with their pre-injury employer;
- working with employers closely about safety and return to work through targeted programs;
- claims initiatives, focusing on management of severe injury, long-term incapacity and work injury damages claims; and
- a new operating model for the Worker's Compensation Division to provide one common, simplified view of worker's compensation insurance to make it easier for customers to navigate the system.

Disclaimer

This publication may contain work health and safety and workers compensation information. It may include some of your obligations under the various legislation that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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