

# Workplace Injury Alert

November 2007

## **AMENDMENTS TO THE WORKERS' COMPENSATION AND REHABILITATION ACT 2003**

A Bill is presently before the Queensland Parliament to amend the *Workers' Compensation and Rehabilitation Act 2003*. The *Workers' Compensation and Rehabilitation and Other Acts Amendment Bill 2007*, was passed on 30 October 2007 and, will make substantial changes to workers' compensation entitlements.

The Government sees *the amendments as enhancing benefits for longer term injured workers and reducing the duration of workers' compensation claims by better facilitating early return to work.*

The effect of the proposed amendments for injured workers is as follows:-

- For the majority of claims the workers' compensation insurer must make a decision concerning a worker's application for workers' compensation within 20 business days after the application is made. The Bill therefore reduces the time for making a decision by 20 business days in respect to most injuries and a reduction of 40 business days in respect to psychiatric injury or the death of a worker.
- Weekly benefit payments will be sustained at a higher level for longer periods. Currently, workers receive 85% of normal weekly earnings, 80% of Queensland ordinary time earnings (QOTE) or the amount payable under the worker's industrial instrument for the first 26 weeks. Following 26 weeks of incapacity, a worker unable to work receives a reduced benefit for the next 26 weeks. This is generally a drop to 75% of the worker's normal weekly earnings or 70% of QOTE. After 52 weeks, the weekly benefits drop to 65% of normal weekly earnings or 60% of QOTE. The proposed amendments seek to extend the period of time that a worker receives 75% of their normal weekly earnings or 70% of QOTE from week 27 to two years. The effect of this amendment will be to enable workers who are seriously injured to access 10% more benefits whilst they are injured. Whilst workers do not receive a sum equivalent to their usual wages whilst on workers' compensation, they will receive 10% more by way of benefits for an additional 12 month period. Workers who continue to remain incapacitated for work at the end of a two year period will, under the amendments, remain entitled to 75% of the worker's net weekly earnings or 70% of quote. The total effect of the proposed amendments is to allow workers who are unable to return to work for a period of one year up to a period of five years post accident, to access an additional 10% compensation by way of weekly benefits. For workers who are not receiving their usual weekly income, this will substantially assist workers who meet financial commitments which they incurred prior to being injured.
- The Bill also proposes to introduce advances on lump sum compensation. The proposed new section 178A allows an insurer to make an advance payment to a worker where it is satisfied the worker is experiencing financial hardship and the worker has an entitlement to lump sum compensation for injury. The insurer is given the discretion to advance to the worker amounts on account of lump sum compensation it considers appropriate in the circumstances. Acceptance of an advance on account of lump sum compensation by a worker will not constitute an election by a worker not to seek damages for the injury.
- Additional lump sum compensation amendments – The Bill proposes to amend section 192 of the Workers' Compensation Act such that a worker who has a work related impairment of more than 30% is entitled to an additional lump sum payment payable according to a graduated scale. Additional lump sum

payments will be payable for all injuries other than psychiatric injuries where the work related impairment is 30% or more. Previously, the work related impairment had to be 50% or more. The graduated scale is also being amended such that the maximum additional lump sum compensation will go up to \$218,400.00 from the present \$182,620.00.

- Amendments to compensation entitlements on a worker's death – If a worker dies because of injury, then claims by dependants and claims for funeral expenses are made. The amendments propose to exclude eligibility for dependants of workers who have a terminal condition from a latent onset injury who have already received lump sum compensation for the latent onset injury of making a claim under this provision.
- Claimants with more than one injury from an event – Workers who have been assessed for an injury but have an unassessed injury who wish to seek damages could previously ask for the unassessed injury to be assessed to decide permanent impairment. The proposed amendments will prevent the claimant from seeking that injury to be assessed for a permanent impairment. At present a worker choosing to proceed with a claim for damages does not often exercise the right to have a statutory assessment of permanent impairment for the unassessed injury. Assessment of that injury is generally conducted by the parties as part of the assessment of the damages claim.
- Extension of the functions and power of Q-Comp, the workers' compensation regulatory authority – The Bill proposes to extend the authority's functions to the administration of scheme wide rehabilitation and return to work programs.

The amendments concerning the timeframe for the insurer to make a decision concerning an application for workers' compensation will apply to applications for compensation made on or after 1 January 2008. The amendments concerning increases in the weekly payments for total incapacity, additional lump sums for certain workers, the reduction of the sum payable on a worker's death and provisions concerning the non-assessment of unassessed injuries will apply in respect to injuries suffered on or after 1 January 2008. Workers injured prior to 1 January 2008 will continue to receive the entitlements under existing legislation.

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