

COMPENSATION UPDATE - SUMMER 2020

Centrelink - Preclusion/Refund	\$1,033.30 p/w
Civil Liability Act – Max 1/10/20 (15% most extreme case threshold)	\$687,000
Motor Accidents - Max 1/10/20 11% WPI threshold - AMA IV)	\$590,000
Wages limit- MAC Act	\$5,412 p/w
-1/12/17 MAI Act	\$4,364 pw
Care - Gratuitous (6 hours/ 6 months)	\$32.19 p/h
Travel Expenses)1/10/05)	\$0.55km

WORKERS COMPENSATION – WEEKLY PAYMENTS INJURIES PRE 2012 RATES - EXEMPT WORKERS 1 OCTOBER 2020

Firefighters, Paramedics and Police

Max weekly benefit -	\$2,242.40 p/w
First 26 weeks' incapacity - Base Rate Only	
After 26 weeks	
- No Dependants	\$527.40 p/w
- Dependant spouse	\$666.40 p/w
- Dependant spouse/ 2 kids	\$888.60 p/w
Coal Miners (working in or about coal mines) separate rates	

EXISTING RECIPIENT OF WEEKLY PAYMENTS - 2012 Act

Transitional amount	\$1,105.20 p/w (1/10/20)
No current work capacity	\$1,105.20 x 80% = \$884.16
Work capacity (post 130 weeks' – unless > 20% WPI):	\$884.16 - earnings = \$ x benefit.

All existing Claimants will now have been assessed for maximum of 5 years weekly benefits and must have greater than 20% whole person impairment and also be totally unfit for all work or working minimum 15 hours per week to continue to receive weekly benefits.

INJURIES FROM 1 OCTOBER, 2012 Max \$2,242.40 (1/10/20)

- First 13 weeks' - 95% of PIAWE
 - Working (15 hours) - 95% less actual earnings.
- Weekly compensation paid for more than 130 weeks' then must be working at least 15 hours [unless >20% WPI (52 weeks' notice) or no benefits at all - will apply to most injured workers.
- Insurer must otherwise be "satisfied" worker will not be able to increase capacity "indefinitely" - difficult /impossible test.
- New definition to simplify calculation of pre injury earnings (**PIAWE**) (See over page)

Over 30% Whole Person Impairment (WPI)
HIGHEST NEEDS WORKER \$854.00 p/w (no change 1/10/20)

DEATH BENEFITS (2015 WC ACT)

Death claim: lump sum (1/10/20)	\$834,200
Payment: dependant child	\$149.30 p/w
Funeral expenses (5/8/15)	\$15,000

TREATMENT EXPENSES

Pre-approval necessary from Insurer with some limited exceptions - GP/Specialist/X-ray/Chemist or by order of the Commission.

All treatment coverage stops 2 years after claim or weekly entitlement ceases if less than 11% WPI.

11-20% WPI - 5 years coverage

Over 20% WPI - Lifetime coverage restored

Artificial Aids - Lifelong coverage restored – (4/12/15).

Hearing aids replaced each 5 years.

Secondary Surgery for all Claimants within 2 years.

RETURN TO WORK ASSISTANCE

\$1000 Education/Retraining assistance – up to \$8,000 if over 20% WPI and off work more than 78 weeks'

WORK CAPACITY ASSESSMENT/DECISIONS

Strict Compliance with Section 54 essential, 3 months + 4 working days' notice.

Internal Review (30 days). Payments to continue.

Jurisdiction restored to Workers Compensation Commission to determine work capacity disputes made after 1/1/19

Weekly Compensation – 12 months after retirement age – Born after 1/1/57 – Pension age 67.

WHOLE PERSON IMPAIRMENT

One claim rule applies to ALL injuries after 19/6/12 – 11% threshold – no pain & suffering payment. Claim made for WPI before 19/6/12 will now be allowed to make one further claim after 19/6/12 for section 66 benefit only.

Maximum of \$631,370 (Injuries from 5/8/15)

NEW INDEXATION 1 July 2020

New Rates

11% (\$24,580) threshold – all bodily injuries

15% (\$37,420) threshold – Psychological injury

21% (\$56,680) HIGH NEEDS WORKER

31% (\$90,850) HIGHEST NEEDS WORKER

Lower rates for Exempt Workers

WORK JOURNEY PROTECTION

Check coverage with union and income protection/TPD coverage as part of Superannuation. Journeys to and from work only covered if there is a "real and substantial connection with employment" but new Motor Accident Injuries Act to be considered from 1/12/17.

PROTECTION FOR WORKERS OVER 20% WPI

Workers who suffer greater than 20% WPI following a workplace injury, are not subject to the 260 week limit of weekly payments of compensation.

But what if a worker is assessed by an Approved Medical Specialist (AMS) as suffering greater than 20% WPI after they have received 260 weeks of weekly payments?

A recent decision of the NSW Court of Appeal determined that in such circumstances the worker is entitled to a back payment of weekly payments of compensation from the time they reached the 260 week limit, to the time that the Medical Assessment Certificate assessing the worker to be greater than 20% WPI is issued

[\(Hochbaum v RSM Building Services Pty Ltd: Whitton v TAFE NSW \[2020\] NSWCA 113.](#)

UNDERPAYMENT OF INJURED WORKERS BY ICARE

The recent controversy which has engulfed the NSW Workers Compensation Nominal Insurer, iCare, following a joint ABC and Sydney Morning Herald Investigation, has revealed potentially thousands of injured workers in NSW have been underpaid between 2012 and 2018. It is estimated that the total value of the underpayment to workers is between \$40-\$80 million.

If you consider you have been underpaid you should contact us for further advice

RECENT CASES

The Full Court of the Federal Court of Australia rejected the assertions by a lawyer that his conduct towards an employee did not amount to sexual harassment pursuant to the Sex Discrimination Act 1984 (Cth) and further provides a contemporary assessment of general and aggravated damages.

[Hughes t/a Beesley & Hughes Lawyers –v- Hill \[2020\] FCAFC126](#)

The NSW Court of Appeal considered that the exclusion from liability in respect to dangerous recreational activities applies to professional sporting activities namely a professional horse race confirming its earlier decision in *Goode v England* [2017].

[Singh bhnf Ambu Kanwar –v- Lynch \[2020\] NSWCA152](#)

Loneragan J determined that the Defendant was liable for injuries sustained by an inmate at Parklea noting the special relationship between prison authorities and inmates under its care and that the prison has a duty of care to prevent harm deliberately inflicted on an inmate. The case provides significant analysis on what reasonable care should have been taken to protect the inmate from the risk of harm. 15%WPI threshold so reserved for serious injury.

[O'Connor v GEO Group Australia Pty Ltd \[2019\] NSWSC 202](#)

NEW MOTOR ACCIDENT INJURIES ACT – 1 DECEMBER 2017

Everyone injured in motor vehicle accidents (regardless of fault) will have access to reduced benefits including wages/treatment costs.

First 13 weeks – 95% pre accident earnings

14 - 78 weeks - 80% if no capacity and 85% less earnings.

After 78 weeks – 80% net loss of earning capacity (not taxable)

Treatment coverage limited and paid domestic assistance limited to 2 years (no family assistance payable).

Driver who causes injury will have access to same defined benefits as innocent victims for first 26 weeks. Thereafter an injured person will only be entitled to continuing benefits if their injury is not minor and they are not the driver wholly or mostly (61% or more) at fault. Weekly benefits may be reduced for contributory negligence once assessed by insurer.

Procedure- Claim Form must be lodged within **28 days** to receive defined benefits OR not paid till Form lodged-(3 month limit).

No benefits payable if entitled to workers compensation for accident – **must lodge both claim forms immediately.**

Limited fault based claims will be available only if not a **minor injury**. Restricted to wage loss recovery.

Compensation for impairment/pain and suffering if over **10% WPI**.

3 year time limit to lodge final claim and 20 month / 2 year time limits apply before finalisation of claim.

Treatment expenses continue to be covered by statutory scheme for maximum 5 years then transferred to LTCS - no damages payable.

BLAMELESS ACCIDENTS

Application should be considered in all motor accidents to put Insurer on notice as at least an alternative allegation to fault where Claimant's injuries likely to exceed 10% WPI threshold.

Statutory benefits payable under 2017 Act.