

Information for Law Society's Monday Briefs

The *Workers Compensation Legislation Amendment Act 2010* (the Act) received Assent on 16 November 2010 and will be proclaimed to commence on 1 February 2011.

Important amendments in the Act:

- Extend the jurisdiction of the Workers Compensation Commission in relation to disputes about treatment and services that are proposed to be provided. This amendment resolves the anomaly in the legislation highlighted in the decision of *Wayne Widdup v Roy Hamilton [2006] NSWCCPD 258* (4 October 2006).
- Clarify the nature of appeals by way of a 'review' of the decisions of Arbitrators and Medical Appeal Panels and the circumstances in which fresh evidence may be admitted in those appeals. These amendments reverse the effects of a number of decisions made by the Court of Appeal which expanded the scope of appeal rights so that an appeal could be heard *de novo* (from the beginning). The amendments also ensure that only fresh evidence that was *both* not available to the *parties* and not reasonably obtainable by the *parties* before the proceedings can be admitted.
- Clarify that the maximum statutory cap for weekly benefits paid for partial incapacity applies to the benefit entitlement only. This amendment makes it clear that the maximum statutory cap for weekly benefits is applied to the compensation payment only. This means that the cap applies to the *make up pay* component of a worker's weekly income, not the total amount received by the worker, including wages or salary.
- Clarify that there is no stay on an award for weekly benefits when that award is being appealed. This amendment will require that weekly benefits be paid to a worker pending the outcome of a decision on an appeal against the payment of those benefits.
- Ensure that a worker has been paid their lump sum statutory entitlements before they settle a work injury damages claim. This amendment prevents the rolling of all entitlements (statutory and damages) into a single lump sum payment.
- Clarify the operation of provisions that enable certain matters of the Workers Compensation Commission to be reconsidered as an alternative to formal legal appeals or challenges. The former drafting of section 378 inadvertently allowed appeals against a decision of an approved medical specialist to be lodged as reconsiderations, even where they didn't meet the grounds for appeal. The amendment ensures that all appeals against a decision of an approved medical specialist must first meet the grounds of appeal before it will be reviewed either as an appeal to a medical appeal panel or as a reconsideration.

Also commencing on 1 February 2011 is the *Workers Compensation Regulation 2010*, a re-make of the current *Workers Compensation Regulation 2003*, with minor amendments, including those consequent on the Act.