

# WORKERS' COMPENSATION in Tasmania

By Sandra Taglieri

## STATUTORY BENEFITS

In Tasmania, the workers' compensation system is regulated by the *Workers' Rehabilitation & Compensation Act 1988* (the Act) and the *Workers' Rehabilitation & Compensation Regulations 2001*. The Act was significantly amended recently, with amendments commencing 1 July 2010 and most amendments not being retrospective. The following benefits are available from 1 July 2010.

### Weekly payments of compensation

The payments are subject to step-down provisions. In the first 26 weeks of incapacity, workers are entitled to 100 per cent of their normal weekly earnings (NWE) or ordinary time rate of pay (whichever is greater); then 90 per cent NWE for up to 78 weeks. After 78 weeks, 80 per cent NWE is paid. For partial incapacity, gap payments are made up to these levels of payment.

Weekly payments are recoverable for variable maximum periods depending on the degree of impairment caused by the injury.

- 0 – 14 per cent whole person impairment (WPI), maximum of 9 years' weekly payments;
- 15 – 19 per cent WPI, maximum of 12 years' weekly payments;
- 20 – 29 per cent WPI, maximum of 20 years' weekly payments;
- 30 per cent WPI or greater, weekly payments up to age 65 years.

Weekly payments are payable only if incapacity is supported by a medical certificate in the prescribed form 1.

### Medical expenses

There is no monetary limit, but expenses are only payable up to 52 weeks after the date of termination of weekly payments or, if no weekly

payments are payable in respect of the injury, 52 weeks from the date of the claim. Medical expenses are only payable if reasonable, and necessarily incurred for the work caused injury.

### Permanent impairment

Workers are entitled to a small lump-sum payment if they have suffered a permanent whole-person impairment (WPI) of 5 per cent or more in the case of physical injury. In the case of psychiatric injury, at least 10 per cent WPI must exist before a lump sum is payable. The maximum lump sum payable is for a 70 per cent WPI or greater, and is the sum of \$266,055.11.

### TIME-LIMITS AND DISPUTES

Injuries must be reported to the employer as soon as practicable and claims lodged within six months of the injury or death. In cases of industrial deafness, if an employee leaves their employment, a claim must be made within six months of termination. Claims for later conditions that develop must also be lodged within the prescribed time limits.

The Workers' Rehabilitation and Compensation Tribunal (WRCT) determines workers' compensation disputes. Disputed claims go through a process of initial referral to the tribunal, teleconferences, conciliation conference/s and, if a claim is still not resolved, the matter proceeds to hearing. At hearing, the tribunal is not bound by the rules of evidence.

Successful parties in disputed matters that have been referred to the WRCT are entitled to 85 per cent of the Supreme Court scale costs from the other party, and to recover disbursements in full. The costs of legal practitioners attending conciliation conferences on behalf

of their clients cannot be recovered, because the government felt that lawyers would hinder conciliation.

### COMMON-LAW DISPUTES

Common-law damages are also available, but only in extremely limited circumstances – workers must have 20 per cent WPI or more, and the injury must be caused by their employer's negligence. WPI assessments use the *AMA Guides* (4<sup>th</sup> edition) as modified by the *Tasmanian WorkCover Board Guidelines*, which are even more restrictive than the *AMA Guides*.

Both the inappropriate limit on the recovery of costs and, more importantly, the restriction on common-law damages, severely hinder what a worker should be entitled to recover as a result of their injuries. Legislative reforms that commenced on 1 July 2010 improved statutory benefits for serious injury and also somewhat improved the ability to pursue common-law claims.

### INJURY MANAGEMENT AND REHABILITATION

The amendments to the Act that commenced on 1 July 2010 have increased the rights and obligations of both workers and employers/insurers concerning injury management and rehabilitation. Relevant provisions are ss143A -143F for employers and 143L – 143N for workers. The WRCT now has express powers in relation to disputes concerning injury management and rehabilitation (s143Q). ■

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