



Workers Compensation **independent** review office

SECTION 39

THE 260 WEEK AND S39 DILEMMA

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ALBURY, 21 JULY 2017**

THE RELEVANT LEGISLATION

SECTION 39

Section 39 Workers Compensation Act 1987 (“WCA”)

39 Cessation of weekly payments after 5 years

(1) *Despite any other provision of this Division, a worker has no entitlement to weekly payments of compensation under this Division in respect of an injury after an aggregate period of **260 weeks** (whether or not consecutive) in respect of which a weekly payment has been paid or is payable to the worker in respect of the injury.*

(2) *This section does not apply to an injured worker whose injury results in permanent impairment if the degree of permanent impairment resulting from the injury is **more than 20%**.*

Note. For workers with more than 20% permanent impairment, entitlement to compensation may continue after 260 weeks but entitlement after 260 weeks is still subject to section 38.

(3) *For the purposes of this section, **the degree of permanent impairment that results from an injury is to be assessed as provided by section 65** (for an assessment for the purposes of Division 4).*

CALCULATION OF 260 WEEKS

1. Workers injured before 1 October 2012

Weekly payments made before 1 January 2013 are excluded in calculating the 260 week period.

2. Workers injured after 1 October 2012

Calculation of 260 week period commences from the first date of the incapacity.

3. What is a week? A week includes any day of the week in which a payment of weekly compensation (in any amount) was made.

THE RELEVANT LEGISLATION

Section 65 WCA

65 Determination of degree of permanent impairment

(1) For the purposes of this Division, the degree of permanent impairment that results from an injury is to be assessed as provided by this section and Part 7 (Medical assessment) of Chapter 7 of the 1998 Act.

THE RELEVANT LEGISLATION

Section 322A

(1) Only one assessment may be made of the degree of permanent impairment of an injured worker

THE RELEVANT REGULATION

The Workers Compensation Amendment (Transitional Arrangements for Weekly Payments) Regulation 2016

28B Application and operation of Part

- (1) ***This Part takes effect on and from 1 October 2012.***
- (2) ***This Part applies to an injured worker who is an existing recipient of weekly payments.***

28C 5 year limit on weekly payments

Section 39 of the 1987 Act (as substituted by the 2012 amending Act) does not apply to an injured worker if the worker's injury has resulted in permanent impairment and:

- (a) ***an assessment of the degree of permanent impairment for the purposes of the Workers Compensation Acts is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, or***
- (b) ***the insurer is satisfied that the degree of permanent impairment is likely to be more than 20% (whether or not the degree of permanent impairment has previously been assessed).***

28D Further permanent impairment assessments

- (1) ***This clause applies to an injured worker if the degree of permanent impairment resulting from the worker's injury is or has been assessed for the purposes of the Workers Compensation Acts.***
- (2) ***Section 322A of the 1998 Act does not operate to prevent a further assessment being made of the degree of permanent impairment resulting from the worker's injury for the purposes of Part 3 of the 1987 Act.***
- (3) ***However, only one further assessment may be made of the degree of permanent impairment resulting from the worker's injury.***

THE RELEVANT LEGISLATION

Section 39 Workers Compensation Act 1987 (“WCA”) –

39 (3) For the purposes of this section, the degree of permanent impairment that results from an injury is to be assessed as provided by section 65 (for an assessment for the purposes of Division 4).



Section 65 WCA

65 Determination of degree of permanent impairment

(1) For the purposes of this Division, the degree of permanent impairment that results from an injury is to be assessed as provided by this section and Part 7 (Medical assessment) of Chapter 7 of the 1998 Act.



Part 7 of Chapter 7 of the 1998 Act

Section 319 Definitions

In this Act:

- *approved medical specialist means a medical practitioner appointed under this Part as an approved medical specialist.*
- *medical dispute means a dispute between a claimant and the person on whom a claim is made about any of the following matters or a question about any of the following matters in connection with a claim:*

S39 ISSUES

If a worker is not MMI at 260 weeks
then they are not over 20% WPI

SECTION 39 FUNDING

For review of the letter to the worker received from the insurer and advising of the potential future termination of weekly benefits and advise to the worker, WIRO will grant funding for professional costs of \$750.00 plus GST.

This initial grant does not include approval to incur any disbursements.

Allianz Australia Workers Compensation (NSW) Limited
ACN 003 087 545 ABN 17 003 087 545

As Agent for the NSW WorkCover Scheme
ABN 63 564 379 108 / 002

14 February 2017

Mr [REDACTED]
[REDACTED]
[REDACTED]



CLAIM DETAILS

CLAIM NUMBER
992102219975033

DATE OF INJURY
26/02/2011

Permanent Impairment Assessment

Dear [REDACTED]

Since the 2012 changes to NSW workers compensation legislation, injured workers with a permanent impairment of 20% or less are entitled to weekly payments for up to a maximum of 260 weeks. The State Insurance Regulatory Authority (SIRA) has recently reminded insurers that for some workers the 260 weeks will be reached in late 2017 or early 2018. As such, with the goal of ensuring our customers are at the centre of everything we do, Allianz, in collaboration with icare, has proactively commenced working with affected injured workers and other stakeholders to prepare for this transition from weekly payments.

The legislation is applied according to when your claim was made.

As your claim was made before 1 October 2012, no weekly payments received prior to 1 January 2013 will be counted toward the 260 weeks.

As at today's date you have been paid 215 weeks of payments.

If you continue to receive weekly payments you are likely to reach the 260 week limit towards the end of December 2017.

You were previously assessed for whole person impairment by Dr John Beer on 21 May 2014.

Dr Beer determined your whole person impairment to be 12%.

What does this mean for you?

Based on this assessment, you will have no entitlement to weekly payments of compensation after an aggregate period of 260 weeks has been paid. Your weekly payments are expected to cease towards the end of 2017.

We are committed to ensuring you will receive appropriate assistance and support through this transition process and we will be in further contact with you to discuss the assistance available.

Your entitlement to reasonably necessary medical or related treatment will continue for up to 5 years after your weekly payments cease.

We enclose a copy of the assessment report for your reference.

Action required

*Allianz is committed to providing you with the highest level of care and courtesy. To guarantee the highest level of customer service, all calls made to and from Allianz may be recorded or monitored for coaching, verification or service improvement purposes. Please advise your customer service representative if you do not wish this to happen. To assist you, Allianz has outlined our service promise and how you may contact us. The Customer Service Charter is available on our website www.allianz.com.au.

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SECTION 39 FUNDING LETTER OF ADVICE

- Detail past assessments and awards received

“ An Approved Medical Specialist assessed you as having a total of 12% WPI on 1 July 2011 in relation to your injuries”

- Obtain an update from the client in relation to treatment and progress

“You believe your condition has deteriorated since 2011 and have been attending your specialist and GP and have undergone surgery to your back”

- Advise in relation to whether there is some prospects of meeting the s39 threshold

“There is a reasonable argument that you may possibly be assessed as having a whole person impairment of greater than 20% due to the complexity of your symptoms and your further deterioration”

SECTION 39 EXTENSION OF FUNDING

Funding of \$1,500 (including the original \$750 plus GST) and the cost of the Independent Medical Report to challenge the insurer's assessment of WPI

SECTION 39 EXTENSION OF FUNDING

If the matter proceeds to the Workers Compensation Commission for a threshold dispute only, a funding will be extended by a further \$1,500. If a Form 2 is required Schedule 6 costs apply.

WORKERS COMPENSATION COMMISSION

Mar 2017

Application

Application for Assessment by an Approved Medical Specialist
This is the approved form to request referral for assessment of permanent impairment where there is a threshold dispute as to the degree of permanent impairment or where there is a dispute as to an employee's condition or fitness for employment.

Worker/Claimant:

Employer/Defendant:

Matter No:
(Office use only)

Filed by:

<input type="checkbox"/> Worker/Claimant	<input type="checkbox"/> Insurer/scheme agent*	<input type="checkbox"/> Self-insurer
<input type="checkbox"/> Worker/Claimant representative	<input type="checkbox"/> Insurer/scheme agent representative	<input type="checkbox"/> icare
<input type="checkbox"/> Employer/Defendant	<input type="checkbox"/> Specialised insurer	<input type="checkbox"/> TMF Agent
<input type="checkbox"/> Employer/Defendant representative	<input type="checkbox"/> Industrial Relations Commission	

**Note scheme agent means scheme agent for the nominal insurer*

This application is for:

<input type="checkbox"/> Assessment as to whether the degree of permanent impairment is more than 20% (section 32A, Workers Compensation Act 1987 - worker with high needs)
<input type="checkbox"/> Assessment as to whether the degree of permanent impairment is more than 30% (section 32A, Workers Compensation Act 1987 - worker with highest needs)
<input checked="" type="checkbox"/> Assessment as to whether the degree of permanent impairment is more than 20% (section 39, Workers Compensation Act 1987 - cessation of weekly payments after 5 years)

FORM 1 Application for Assessment by an Approved Medical Specialist

CONTACT US

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