



Workers compensation NSW – lump sum claims for permanent impairment

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If you're [injured at work in New South Wales](#), you can lodge a workers compensation claim with the state-based scheme, ICARE ("Insurance and Care NSW") or the federal-based scheme, [Comcare](#). Workers compensation claims cover a number of benefits. Today we're looking at lump sum payments for permanent impairment under the state-based scheme in NSW. This is covered by s66 of the relevant Act.

In 2012, the NSW Government passed a number of amendments to the *Workers Compensation Act 1987* ("the Act").

Those 2012 amendments together with several subsequent court decisions, an amended *Workers Compensation Act (2015)*, Workers Compensation Regulations and other cases subsequently passed in the Workers Compensation Commission now comprise what makes up the collective rules when applying "the law" to an injured worker's entitlement to Section 66.

An injured worker's entitlement to Section 66 lump sum compensation

This is a complicated area of law. We strongly recommend you seek legal advice if pursuing a s66 claim for permanent impairment.

The entitlement and amount payable to an injured worker pursuant to Section 66 lump sum compensation is very much dependent on a number of factors.

Factors considered when determining entitlement to lump sum compensation for injured workers in NSW

- Ascertaining as a starting point, whether the amendments made to the law affect an injured worker. Some workers are exempt from all changes made to the law in recent years. For example, police officers, coal miners, paramedics and firefighters are not

impacted by the amendments.

- The date of injury (“DOI”) dictates which legislation applies; for example, injuries that occurred before the passing of the 1987 Act are covered by a different piece of legislation and are also exempt to the changes made to the law in recent years.
- Whether an injury is a physical injury or a psychological injury
- Whether the injured worker has reached Maximum Medical Improvement. (“MMI”). MMI is the definition as to whether or not your condition is stable enough to allow an assessment of permanent impairment or whether your permanent impairment may deteriorate within the next 12 months.
- Whether an injured worker’s permanent impairment has deteriorated with reference to medical evidence. An injured worker’s capacity to reach the threshold percentage for permanent impairment is dependent on their date of injury and whether their injury is physical or psychological
- The date an injured worker made their claim for permanent impairment. Given the recent amendments, an entitlement (if any) to Section 66 lump sum compensation is determinant on whether a claim was made ‘before’ or ‘after’ 19 June 2012.
 - If an injured worker has received lump sum compensation once or several times during the course of their lifetime for that DOI, the law now states that the same injured worker may be entitled to a further ‘top up’ of any s.66 lump sum compensation paid before 19 June 2012.
 - This is a complex and often confusing entitlement. Legal advice is required as to whether the injured worker has exhausted their right to ‘one further claim’ because often injured workers confuse an agreement to settle their claim with that of a binding medical assessment in the Workers Compensation Commission (“WCC”).
- Medical evidence demonstrating deterioration may arise over an injured workers life, that was not necessarily available when a Section 66 claim was originally made. Consequential injuries to a primary injury are compensable for the purpose of Section 66 compensation. It is crucial that you speak to your lawyer about the right time to run your final claim to Section 66 lump sum entitlement.

Even if you think you’ve exhausted all your compensation claims, we may still be able to assist

Please keep in mind, that even if you have exhausted all of your rights to section 66 lump sum compensation, the lawyers at Hall Payne may be able to combine your previous assessments and attempt to exceed the Work Injury Damages Threshold for the purpose of common law damages.

Common law damages is a separate area of the law and includes your right to future and past economic loss (wages and superannuation). Given the recent changes, we recommend you contact our workers compensation team to assess what the amendments mean for you.

Get help from a worker's compensation lawyer

Given the complexity of the law in relation to workers compensation lump sum compensation claims, if you have questions about whether you are entitled to a claim for permanent impairment in New South Wales, please feel free to get in touch directly with

today's writer, [Huia Azimi](#).

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