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Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020

Discontinuation of the common law termination day Fact Sheet 2

**The Act has been amended to discontinue the common law termination day
that applied to common law claims**

Effective 12 October 2020

Background

- Before the *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020* commenced on 12 October 2020 workers were required to make an election to pursue common law damages by the termination day.
- The termination day was generally 12 months from the date the worker made a claim for compensation but could be extended in specified circumstances.

Discontinuation of the termination day

- The *Workers' Compensation and Injury Management Amendment (COVID-19 Response) Act 2020* discontinued the termination day by deleting relevant provisions in the *Workers Compensation and Injury Management Act* (the Act) with effect from 12 October 2020. The effect of the changes is summarised below.

Impact on workers

- There is no longer any time constraint in the workers' compensation legislation impacting on a workers' ability to pursue common law damages.
- The amendments do not affect the procedural requirements to elect to pursue common law damages based on a whole person impairment of at least 15%, and to commence proceedings after an election is registered with the Director.
- Transitional arrangements in the legislation provide for workers to make an election to pursue common law damages even if the termination day had expired before 12 October 2020.

- The amendments do not impact on the application of the limitation periods under the *Limitation Act 2005* that apply to common law claims for personal injury.
- Workers should obtain appropriate legal advice about the effect of the transitional arrangements that permit an election to be made even if the termination had expired before 12 October 2020.

Impact on employers/ insurers

- An employer's obligation to notify a worker about the termination day under section 93O of the Act ceases from 12 October 2020.
- An alternative notification is required to be sent to workers about common law claims by insurers and self insurers from 16 November 2020 – see notice about common law claims fact sheet.

Impact on approved medical specialist assessments

- From 12 October 2020 AMS will no longer be required to provide an opinion on Form AMS 8 for the purpose of recommending an extension of the termination day.
- This change does not impact on the requirement for a worker's condition to have stabilised before an assessment of the worker's degree of permanent whole of person impairment can be done. However, there are changes that impact on when a 'special evaluation' can be done for common law purposes.
- From 12 October 2020 a special evaluation can be done if, after the period of 18 months from the date the worker made a workers' compensation claim, an AMS certifies the worker's condition has not stabilised sufficiently for a normal evaluation to be done. The claim date can be verified by checking the date on the workers compensation claim form (in the box – 'date employer received the completed claim form').
- AMS have been notified about this change and Form AMS 8 has been updated.