



New South Wales

Workers Compensation Legislation Amendment Act 2002 No 124

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New South Wales

Workers Compensation Legislation Amendment Act 2002 No 124

Act No 124, 2002

An Act to amend the *Workers Compensation Act 1987* and certain other Acts to make further provision in respect of cross-border liability for compensation, choice of law for common law damages, sporting injuries and compliance; and for other purposes. [Assented to 16 December 2002]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Workers Compensation Legislation Amendment Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendments

The Acts specified in Schedules 1–4 are amended as set out in those Schedules.

Schedule 1 Cross-border amendments

(Section 3)

1.1 Workers Compensation Act 1987 No 70

[1] Sections 9AA–9AC

Insert after section 9:

9AA Liability for compensation

- (1) Compensation under this Act is only payable in respect of employment that is connected with this State.
- (2) The fact that a worker is outside this State when the injury happens does not prevent compensation being payable under this Act in respect of employment that is connected with this State.
- (3) A worker's employment is connected with:
 - (a) the State in which the worker usually works in that employment, or
 - (b) if no State or no one State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment, or
 - (c) if no State or no one State is identified by paragraph (a) or (b), the State in which the employer's principal place of business in Australia is located.
- (4) In the case of a worker working on a ship, if no State or no one State is identified by subsection (3), a worker's employment is, while working on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than one State) the State in which the ship most recently became registered.
- (5) If no State is identified by subsection (3) or (if applicable) (4), a worker's employment is connected with this State if:
 - (a) the worker is in this State when the injury happens, and

(b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

(6) In deciding whether a worker usually works in a State, regard must be had to the worker's work history with the employer and the intention of the worker and employer. However, regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.

(7) Compensation under this Act does not apply in respect of the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* of the Commonwealth applies to the worker's employment.

(8) In this section:

ship means any kind of vessel used in navigation by water, however propelled or moved, and includes:

- (a) a barge, lighter, or other floating vessel, and
- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water.

State includes Territory and, in a geographical sense, a State's or Territory's relevant adjacent area as described in Schedule 1.

9AB Recognition of determination of State of connection in another State

(1) If a designated court makes a determination of the State with which a worker's employment is connected for the purposes of a corresponding law, that State is to be recognised for the purposes of section 9AA as the State with which the worker's employment is connected.

(2) This section does not prevent or affect the operation of a determination of the State with which a worker's employment is connected for the purposes of section 9AA made by the Commission or a court of this State before the determination is made by a designated court.

(3) This section does not prevent any appeal relating to any such determination of a designated court. If the determination is altered on appeal, the altered determination is to be recognised under subsection (1).

(4) In this section:

corresponding law means the provisions of the statutory workers compensation scheme of another State that corresponds with section 9AA.

designated court means:

- (a) the Supreme Court of a State in which a corresponding law is in force, or
- (b) a court, tribunal or other decision-making body of a State in which a corresponding law is in force that is declared by the regulations to be a designated court for the purposes of this section.

State includes Territory.

9AC Person not to be compensated twice

- (1) Compensation under this Act is not payable in respect of any matter to the extent that compensation has been received under the laws of a place other than this State.
- (2) If a person receives compensation under this Act and, for the same matter, subsequently receives compensation under the laws of a place other than this State, the person from whom compensation under this Act is received may, in a court of competent jurisdiction, sue and recover from the person the amount described in subsection (3).
- (3) The amount that is recoverable under subsection (2) is:
 - (a) the amount of compensation paid under this Act, or
 - (b) the amount of compensation received under the laws of a place other than this State,whichever is less.

[2] Section 13 Injuries received outside New South Wales

Omit the section.

[3] Section 21 Sailors

Omit the section.

[4] Part 5 Common law remedies

Insert after Division 1:

Division 1A Choice of law

150A The applicable substantive law for work injury claims

- (1) If compensation is payable (whether or not it has been paid) under the statutory workers compensation scheme of a State in respect of an injury to a worker, the substantive law of that State is the substantive law that governs:
 - (a) whether or not a claim for damages in respect of the injury can be made, and
 - (b) if it can be made, the determination of the claim.
- (2) This Division does not apply if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than one State.
- (3) For the purposes of this section, compensation is considered to be payable under a statutory workers compensation scheme of a State in respect of an injury if compensation in respect of it:
 - (a) would have been payable but for a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision, or
 - (b) would have been payable if a claim for that compensation had been duly made, and (where applicable) an election to claim that compensation (instead of damages) had been duly made.
- (4) A reference in this section to compensation payable in respect of an injury does not include a reference to compensation payable on the basis of the provisional acceptance of liability.
- (5) In this Division:

State includes Territory.

150B Claims to which Division applies

- (1) This Division applies only to a claim for damages against a worker's employer in respect of an injury that was caused by:
 - (a) the negligence or other tort (including breach of statutory duty) of the worker's employer, or
 - (b) a breach of contract by the worker's employer.
- (2) Subsection (1) (a) applies even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.
- (3) A reference in this Division to a worker's employer includes a reference to:
 - (a) a person who is vicariously liable for the acts of the employer, and
 - (b) a person for whose acts the employer is vicariously liable.

150C What constitutes injury and employment and who is employer

For the purposes of this Division:

- (a) *injury* and *employer* include anything that is within the scope of a corresponding term in the statutory workers compensation scheme of another State, and
- (b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State.

150D Claim in respect of death included

For the purposes of this Division, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.

150E Meaning of “substantive law”

In this Division:

a State’s legislation about damages for a work related injury means:

- (a) for this State—Part 5 of this Act and Chapter 7 of the 1998 Act, and any other provision of this Act or the 1998 Act providing for the interpretation of anything in that Part or Chapter, and
- (b) for any other State—any provisions of a law of the State that is declared by the regulations to be the State’s legislation about damages for a work related injury.

substantive law includes:

- (a) a law that establishes, modifies, or extinguishes a cause of action or a defence to a cause of action, and
- (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time), and
- (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit, and
- (d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered, and
- (e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered, and
- (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights, and
- (g) a provision of a State’s legislation about damages for a work related injury, whether or not it would be otherwise regarded as procedural in nature,

but does not include a law prescribing rules for choice of law.

150F Availability of action in another State not relevant

- (1) It makes no difference for the purposes of this Division that, under the substantive law of another State:
 - (a) the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State, or
 - (b) the circumstances on which the claim is based do not give rise to a cause of action.
- (2) In this section:

another State means a State other than the State with which the injury is connected.

[5] Section 155 Compulsory insurance for employers

Insert after section 155 (3):

- (3A) It is a defence to a prosecution for an offence under this section concerning an employer's liability in respect of a worker if the court is satisfied that at the time of the alleged offence:
 - (a) the employer believed on reasonable grounds that the employer could not be liable under this Act in respect of the worker because under section 9AA the worker's employment was not connected with this State, and
 - (b) the employer had workers compensation cover in respect of the worker's employment under the law of the State or Territory with which the employer believed on reasonable grounds the worker's employment was connected under section 9AA.
- (3B) In subsection (3A), *workers compensation cover* means insurance or registration required under the law of a State or Territory in respect of liability for statutory workers compensation under that law.

[6] Section 156 Recovery of double premiums from employer not obtaining policy of insurance

Insert after section 156 (7):

- (8) Despite any other provision of this section, if the Authority is satisfied that:

- (a) the reason for the employer not being insured against liability to pay compensation to the worker is that the employer believed on reasonable grounds that the employer could not be liable under this Act in respect of the worker because under section 9AA the worker's employment was not connected with this State, and
- (b) the employer had workers compensation cover in respect of the worker's employment under the law of the State or Territory with which the employer believed on reasonable grounds the worker's employment was connected under section 9AA,

the employer is not liable under this section in respect of that liability.

- (9) In subsection (8), *workers compensation cover* means insurance or registration required under the law of a State or Territory in respect of liability for statutory workers compensation under that law.

[7] **Schedule 1**

Insert as Schedule 1:

Schedule 1 Adjacent areas

(Section 9AA)

1 Definitions

In this Schedule:

continental shelf has the same meaning as in the *Seas and Submerged Lands Act 1973* of the Commonwealth.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973* of the Commonwealth.

2 Adjacent areas

- (1) The *adjacent area* for New South Wales, Victoria, South Australia or Tasmania is so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth in relation to that State as is within the

outer limits of the continental shelf and includes the space above and below that area.

- (2) The **adjacent area** for Queensland is:
- (a) so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth in relation to Queensland as is within the outer limits of the continental shelf, and
 - (b) the Coral Sea area (within the meaning of subsection (7) of section 5A of the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth) other than the territorial sea within the Coral Sea area, and
 - (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 9 February 1983 under section 7 of the *Seas and Submerged Lands Act 1973* of the Commonwealth, and
 - (d) the space above and below the areas described in paragraphs (a), (b) and (c).
- (3) The **adjacent area** for Western Australia is so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth in relation to Western Australia as:
- (a) is within the outer limits of the continental shelf, and
 - (b) is not within Area A of the Zone of Cooperation, and includes the space above and below that area.
- (4) The **adjacent area** for the Northern Territory is:
- (a) so much of the area described in Schedule 2 to the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth in relation to the Northern Territory as:
 - (i) is within the outer limits of the continental shelf, and
 - (ii) is not within Area A of the Zone of Cooperation, and

- (b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of subsection (3) of section 5A of the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth) other than the territorial sea within that area, and
 - (c) the space above and below the areas described in paragraphs (a) and (b).
- (5) However, the adjacent area for a State does not include any area inside the limits of any State or Territory.

[8] Schedule 6 Savings, transitional and other provisions, Part 2 Provisions relating to liability for compensation

Insert as clause 11:

11 Workers Compensation Legislation Amendment Act 2002

- (1) The amendments made by Schedule 1 to the *Workers Compensation Legislation Amendment Act 2002* (referred to in this clause as the ***Schedule 1 amendments***) do not apply in respect of an injury received before the commencement of those amendments, and this Act applies in respect of such an injury as if those amendments had not been made.
- (2) If the death of a worker results from both an injury received before the commencement of the Schedule 1 amendments and an injury received after that commencement, the worker is, for the purposes of the application of the Schedule 1 amendments to and in respect of the death of the worker, to be treated as having died as a result of the injury received after that commencement.
- (3) If a period of incapacity for work resulted both from injury received before the commencement of the Schedule 1 amendments and an injury received after that commencement, the incapacity is, for the purposes of the application of the Schedule 1 amendments to and in respect of that incapacity for work, to be treated as having resulted from the injury received after that commencement.

- (4) The Schedule 1 amendments and subclauses (2) and (3) do not affect the following:
 - (a) the liability of an employer or insurer in respect of an injury received before the commencement of those amendments, including a liability to make a contribution under section 15, 16 or 17 in respect of compensation payable for an injury received after that commencement,
 - (b) the apportionment of liability under section 22 in a case where one or more of the injuries concerned were received or suffered before, and one or more received or suffered after, that commencement.
- (5) A policy of insurance that an employer has against liability under this Act and that is in force on the commencement of the Schedule 1 amendments covers the employer, for as long as the policy remains in force, for the employer's liability under this Act as amended by the Schedule 1 amendments.

[9] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of clause 1 (1):

Workers Compensation Legislation Amendment Act 2002

1.2 Workers Compensation Legislation Amendment Act 1995 No 30

Schedule 6 Amendments relating to liability for workers compensation

Omit the Schedule.

Schedule 2 Compliance amendments

(Section 3)

Workers Compensation Act 1987 No 70

[1] Section 3 Definitions

Insert in alphabetical order:

group means the employers who constitute a group under Division 2A of Part 7.

principal member means the principal member of a group for the time being under Division 2A of Part 7.

[2] Section 163 Records relating to policies and claims to be kept by insurers and self-insurers

Omit “the policy holder” from section 163 (1) (a).

Insert instead “the insured under the policy (or of each insured under the policy in the case of the members of a group)”.

[3] Section 174 Records relating to wages and contracts to be kept and supplied

Insert after section 174 (1):

(1A) If an employer is a member of a group, the records required to be kept by the principal member of the group must include the records required to be kept under this section by each member of the group.

[4] Section 174 (9)

Insert “(including payments as directors’ fees) after “directors” in paragraph (a) of the definition of *wages*.

[5] Section 174 (9)

Insert after paragraph (b) of the definition of *wages*:

- (b1) includes payments for long service leave (including a lump sum payment instead of long service leave and any payment under the *Building and Construction Industry Long Service Payments Act 1986*), and
- (b2) includes a payment made in consequence of the retirement from, or termination of, any office or employment of a worker, being:
 - (i) a lump sum payment paid before or after that retirement or termination in respect of unused annual leave, or unused annual leave and a bonus, loading or other additional payment relating to that leave, or
 - (ii) an amount paid in respect of unused long service leave, or
 - (iii) an amount paid in respect of unused sick leave, and
- (b3) includes the amount that is the employer's fringe benefits taxable amount (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth) in respect of fringe benefits payable to the worker, and
- (b4) includes a superannuation benefit, being money paid or payable by the employer in respect of the worker:
 - (i) to or as a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
 - (ii) as a superannuation guarantee charge within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, or
 - (iii) to or as any other form of superannuation, provident or retirement fund or scheme, including a wholly or partly unfunded fund or scheme, and

- (b5) includes a distribution to a worker as beneficiary under a trust that is required to be included as wages by section 174AA, and

[6] Section 174 (9)

Omit paragraph (c) (i), (ii), (iii), (iv) and (vi) of the definition of *wages*.

Insert instead:

- (iv) directors' fees (except to the extent that those fees are payable to working directors and included as wages under paragraph (a)), or

[7] Section 174AA

Insert after section 174:

174AA Inclusion of trust distributions as wages

- (1) A distribution to a worker as beneficiary under a trust constitutes *wages* for the purposes of section 174 to the extent that the distribution is in lieu of wages for work done for the trust by the worker.
- (2) Work that constitutes the provision of services to the trustee of a trust or for the purposes of a business conducted by the trustee of a trust is *work done for the trust*.
- (3) This section applies in respect of distribution to a worker only if:
 - (a) there is a wages shortfall in respect of work done for the trust by the worker, and
 - (b) the distribution is made in the financial year in which the work is done or in the following financial year.
- (4) There is a *wages shortfall* in respect of work done for the trust by the worker if the total wages (if any) paid or payable to the worker during the financial year in which the work is done is less than the wages that would be payable to the worker for that work if wages were payable at the market rate for that work (with the difference constituting the *wages shortfall* for the purposes of subsection (5)).
- (5) If the distribution does not exceed the wages shortfall in respect of the work, the whole of the distribution is in lieu of

wages for work done for the trust by the worker. Alternatively, if the distribution exceeds the wages shortfall in respect of the work, the distribution is in lieu of wages to the extent of the shortfall.

- (6) For the purpose of determining whether a particular distribution is in lieu of wages for work done for the trust, the total wages (if any) paid or payable to the worker during a financial year for the work is taken to include any previous distribution (whether made during that financial year or the following financial year) that, by application of this section, is a distribution in lieu of wages for the same work.
- (7) The *market rate* for work is the minimum wage rate applicable in respect of the work (or work that is comparable to the work):
 - (a) pursuant to an industrial instrument in force under a law of the State, or
 - (b) if paragraph (a) does not apply, pursuant to an industrial instrument in force under a law of the Commonwealth, or
 - (c) if neither paragraph (a) nor (b) applies, as provided by the WorkCover Guidelines or as determined and notified by the Authority in the particular case.

[8] Section 175 Employers evading payment of correct premiums

Insert after section 175 (4):

(4AA) If the Authority finds that:

- (a) an employer has contravened section 175F (Members of group to be insured under one policy) as a result of the issue or renewal of a policy of insurance, and
- (b) the premium payable for the policy is less by a certain amount than the increase in premium that would have been payable for the issue or renewal of the policy of insurance (*the group policy*) that the employer was required by this section to be covered by (had the group policy been issued or renewed to cover the employer),

the Authority may recover from the employer in a court of competent jurisdiction as a debt due to the Authority a sum equal to twice that amount plus the late payment fee provided

for by subsection (4A), half of which sum is to be paid by the Authority to the insurer and the other half into the WorkCover Authority Fund.

- (4AB) For the purposes of the application of the *Limitation Act 1969* to an action on a cause of action to recover an amount under subsection (4), the cause of action first accrues to the Authority when the Authority makes the finding referred to in that subsection.

[9] Section 175 (4A)

Omit the subsection. Insert instead:

- (4A) The late payment fee at the rate for the time being in force under section 172 is payable:
- (a) under subsection (4) as from the date the premium for the issue or renewal of the policy of insurance concerned first became due and payable to the insurer, or
 - (b) under subsection (4AA) as from the date the premium for the issue or renewal of the group policy referred to in that subsection first became due and payable to the insurer.

[10] Section 175B

Insert after section 175A:

175B Liability of principal contractor for unpaid premiums payable by subcontractor

- (1) This section applies where:
- (a) a person (*the principal contractor*) has entered into a contract for the carrying out of work by another person (*the subcontractor*), and
 - (b) employees of that subcontractor are engaged in carrying out the work (*the relevant employees*), and
 - (c) the work is carried out in connection with a business undertaking of the principal contractor and is work that is an aspect of the work of that business undertaking.

- (2) The principal contractor is liable for the payment of any workers compensation insurance premiums payable by the subcontractor in respect of the work done in connection with the contract during any period of the contract unless the principal contractor has a written statement given by the subcontractor under this section for that period of the contract.
- (3) In this section:
- workers compensation insurance premiums* means:
- (a) if the subcontractor has failed to obtain or maintain in force a policy of insurance as required by section 155 (1) in respect of the work done in connection with the contract during any period of the contract—the amount recoverable under section 156 (1) (Recovery of double premiums from employer not obtaining policy of insurance) in connection with that failure, or
 - (b) if an amount is due and payable by the subcontractor to an insurer as a premium or balance of premium for the issue or renewal of a policy of insurance in respect of the work done in connection with the contract during any period of the contract—that amount, together with any late payment fee payable in respect of that amount under section 175 (2).
- (4) The written statement is a statement comprising the following:
- (a) a statement by the subcontractor that all workers compensation insurance premiums payable by the subcontractor in respect of the work done in connection with the contract during any period of the contract have been paid, accompanied by a copy of any relevant certificate of currency in respect of that insurance,
 - (b) a statement by the subcontractor as to whether the subcontractor is also a principal contractor in connection with that work,

- (c) if the subcontractor is also a principal contractor in connection with that work, a statement by the subcontractor as to whether the subcontractor has been given a written statement under this section in the capacity of principal contractor in connection with that work.
- (5) The regulations may make provision for or with respect to the form of the written statement.
- (6) The principal contractor must keep a copy of any written statement under this section for at least 7 years after it was given.
- (7) The principal contractor may withhold any payment due to the subcontractor under the contract until the subcontractor gives a written statement under this section for any period up to the date of the statement. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection.
- (8) The written statement is not effective to relieve the principal contractor of liability under this section if the principal contractor had, when given the statement, reason to believe it was false.
- (9) A subcontractor who gives the principal contractor a written statement knowing it to be false is guilty of an offence.
Maximum penalty: 100 penalty units.
- (10) Any amount payable by a principal contractor under this section is recoverable as a debt in a court of competent jurisdiction by the person to whom the amount would, as workers compensation insurance premiums, be payable by the subcontractor.
- (11) The principal contractor is entitled to recover from the subcontractor as a debt in a court of competent jurisdiction any payment made by the principal contractor under this section.
- (12) This section does not apply in relation to a contract if the subcontractor is in receivership or in the course of being wound up or, in the case of an individual, is bankrupt and if payments made under the contract are made to the receiver, liquidator or trustee in bankruptcy.

- (13) This section does not apply in respect of a contract entered into by the principal contractor for the carrying out of work at the principal place of residence of the principal contractor.
- (14) The regulations may exempt from the operation of this section any contract, work, principal contractor or subcontractor of a class or description specified in the regulations.

[11] Part 7, Division 2A

Insert after Division 2:

Division 2A Grouping of employers for insurance purposes

175C Grouping of employers

- (1) In this Division:
group means a group constituted under Part 10A of the *Taxation Administration Act 1996*, but does not include any member of the group in respect of whom a determination under section 175D of this Act is in force.
- (2) This Division does not apply to an employer who is a self-insurer.
- (3) The regulations may make provision for or with respect to excluding any class or classes of employers from the operation of this Division or specified provisions of this Division. Any such exclusion may be prescribed to apply subject to specified conditions or conditions determined and notified from time to time by the Authority.

175D Exclusion of employers from groups

- (1) The Authority may, by order in writing, determine that an employer who would, but for the determination, be a member of a group is not a member of the group.
Note. Section 175E sets out the circumstances in which a determination may be made under this section.
- (2) The Authority must give notice in writing of a determination to the employer in respect of whom the determination is made and to each member of the group.

- (3) A determination takes effect:
 - (a) on the date on which notice under subsection (2) is given to the employer excluded from the group, or
 - (b) if another date of effect (including an earlier date) is specified in the notice—on that other date.
- (4) A determination continues in force until it is revoked and notice of the revocation has been served on the employer in respect of whom the determination was made.
- (5) The Authority may revoke a determination if satisfied that the circumstances referred to in section 175E do not apply to the employer.
- (6) Notice of the revocation of a determination must be given by the Authority:
 - (a) to the employer in respect of whom the determination was made, and
 - (b) to each other member of the group of which the employer is a member, as a result of the revocation, by virtue of Part 10A of the *Taxation Administration Act 1996*.
- (7) A revocation of a determination takes effect on the date on which notice under subsection (6) is given to the employer in respect of whom the determination was made.
- (8) The Authority may charge a fee (not exceeding any maximum fee prescribed by the regulations for the purposes of this section) for considering any application for a determination under this section.

175E Grounds for excluding employers from group

- (1) A determination may be made by the Authority under section 175D in respect of the following employers only:
 - (a) an employer who would, but for the determination, be a member of a group arising under section 106H of the *Taxation Administration Act 1996* (Primary groups arising from the use of common employees),

- (b) an employer who carries on a business as trustee of a trust and would, but for the determination, be a member of a group arising under section 106I of that Act (Primary groups of commonly controlled businesses).
- (2) In the case of an employer referred to in subsection (1) (b), the determination may be made only if the Authority is satisfied that the employer would, but for the determination, be a member of a group with a person who carries on another business because of the application of one (but not more than one) of the following grouping principles:
 - (a) the exclusive ownership grouping principle (section 106I (2) (a) and (b) of the *Taxation Administration Act 1996*),
 - (b) the corporate grouping principle (section 106I (2) (c) and (d) and (3) of the *Taxation Administration Act 1996*),
 - (c) the common beneficiary grouping principle (section 106I (2) (e) and (f) and (5)–(8) of the *Taxation Administration Act 1996*).
- (3) The Authority must not make a determination under section 175D unless satisfied that the employer who is the subject of the determination has continuously carried on the business concerned, and will continue to carry on that business, substantially independently of the other members of the group.
- (4) In determining whether an employer carries on business substantially independently of the other member or members of a group, the Authority is to have regard to the nature and degree of ownership or control of the business of each member of the group, the nature of each of those businesses and any other matter that the Authority considers relevant.

175F Members of group to be insured under one policy

- (1) The policy of insurance that an employer who is a member of a group obtains and maintains in force for the purposes of compliance with section 155 must be a policy that also covers each of the other members of the group as the policy that each of them obtains and maintains in force for that purpose.

- (2) A licensed insurer is authorised to issue, or alter the coverage of, a policy of insurance so that the policy covers employers that constitute a group.
- (3) An employer who contravenes this section is guilty of an offence.
Maximum penalty: 100 penalty units.
- (4) If an employer who is a member of a group does not obtain or maintain in force a policy of insurance in compliance with this section, the Authority may by notice in writing to an insurer:
 - (a) direct the cancellation of any policy of insurance obtained or maintained in contravention of this section, and
 - (b) direct the alteration of a policy of insurance (being a policy that covers members of the group concerned) so that the policy covers the employer concerned.
- (5) An insurer must give effect to a direction given to the insurer under this section.
- (6) If an employer who is a member of a group does not obtain and maintain in force a policy of insurance in compliance with section 155:
 - (a) the employer is deemed to be insured under the policy of insurance under which other members of the group are insured for the purposes of compliance with this section, and
 - (b) section 175 applies in respect of the actual failure of the employer to be insured under that policy of insurance (as if paragraph (a) did not deem the employer to be insured under the policy).

175G Principal member of group

- (1) A group must at all times have a principal member.
- (2) The *principal member* of a group is the member of the group who is for the time being nominated by members of the group as the principal member of the group for the purposes of this Act.
- (3) A nomination is to be made to the Authority and must be made in writing in a form approved by the Authority.

- (4) If at any time a group does not have a principal member, each member of the group is guilty of an offence.

Maximum penalty: 100 penalty units.

175H Functions of principal member of group

- (1) The principal member of a group may exercise any of the following functions of any member of the group as agent for and on behalf of the member:

- (a) any function in connection with the issue or renewal of a policy of insurance by the member for the purposes of section 155,
- (b) any function under section 170 (Action by employer where premium not in accordance with insurance premiums order).

- (2) The principal member of a group is guilty of an offence if any member of the group contravenes section 175F.

Maximum penalty: 200 penalty units.

- (3) The principal member of a group must, as soon as practicable (but not later than 2 months) after:

- (a) making an application to an insurer for the issue of a policy, or
- (b) the renewal of a policy,

supply the insurer concerned with a return in the form approved by the Authority specifying details of all the persons (whether or not they are employers) who are members of the group.

- (4) The principal member of a group must, not later than 2 months after the end of the relevant period of insurance relating to a policy, supply the insurer who issued or renewed the policy with a return in the form approved by the Authority specifying details of all the persons (whether or not they are employers) who were members of the group during that period of insurance.

- (5) The principal member of a group who fails to furnish a return as required by subsection (3) or (4) or who in purported compliance with such a requirement furnishes a return that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 200 penalty units.

- (6) The principal member of a group must notify the principal member's insurer in writing within 10 days after any change occurs in the membership of the group giving details of the change.

Maximum penalty: 200 penalty units.

175I Joint and several liability of group members

- (1) If an employer who is a member of a group fails to pay an amount that the employer is required to pay under this Act (including any premium payable for a policy of insurance required under this Act and any sum recoverable by the Authority under this Act from the employer) every member of the group is liable jointly and severally to pay the amount.
- (2) When 2 or more persons are jointly or severally liable to pay an amount as referred to in this section, the person entitled to payment may recover the whole of the amount from them, or any of them, or any one of them.
- (3) A person who pays an amount in accordance with the liability imposed by this section has such rights of contribution or indemnity from the other person or persons as are just.

175J Inspection of records of employers

- (1) The Authority may direct an employer in writing to make available, at such time and at such place as is specified in the direction, for inspection by a specified person authorised by the Authority, records of a specified kind in the possession of the employer that are relevant to the determination of whether the employer is a member of a group and the identity of other members of the group.
- (2) A person authorised under subsection (1) may inspect records in accordance with the terms of the direction and make copies of, or take extracts from, those records.

- (3) An employer given a direction under this section:
 - (a) must comply with the direction, and
 - (b) must not wilfully obstruct or delay an authorised person when exercising any power under subsection (2).

Maximum penalty: 100 penalty units.

- (4) If an inspection under this section reveals that an employer has contravened a provision of this Division, the Authority is entitled to recover in a court of competent jurisdiction as a debt due to the Authority from the employer the costs incurred by the Authority in connection with that inspection.
- (5) A certificate issued by the Authority certifying as to the costs incurred by the Authority in connection with such an inspection is evidence of the matters certified.

[12] Schedule 6 Savings, transitional and other provisions, Part 18E

Insert as Part 18E of Schedule 6:

Part 18E Provisions consequent on enactment of 2002 compliance amendments

1 Definition

In this Part:

2002 compliance amendments means the amendments made by Schedule 2 to the *Workers Compensation Legislation Amendment Act 2002*.

2 Definition of wages

- (1) An amendment made by the 2002 compliance amendments to the definition of *wages* in section 174 (9):
 - (a) does not apply to wages paid before the commencement of the amendment, and
 - (b) does not apply in respect of a policy of insurance issued or renewed before the commencement of the amendment.

- (2) Paragraphs (b1) and (b2) of the definition of *wages* in section 174 (9) extend to payments that relate to leave that accrued before the commencement of those paragraphs.

3 Single insurance policy for employers in group

- (1) Section 175F (Members of group to be insured under one policy) does not apply to an employer who is a member of a group until the policy of insurance that is in force in respect of the employer immediately before the commencement of that section expires or is cancelled.
- (2) The regulations may make provision for or with respect to the early cancellation of policies of insurance held by employers who constitute a group, for the purposes of the phasing-in of the requirements of section 175F.

4 Liability of principal contractors

- (1) Section 175B extends to a contract entered into before the commencement of that section.
- (2) However, section 175B does not apply in respect of workers compensation insurance premiums payable in respect of work done before the commencement of that section.

Schedule 3 Sporting injuries amendments

(Section 3)

3.1 Sporting Injuries Insurance Act 1978 No 141

[1] Section 5A

Insert after section 5:

5A Insurance exemption for sporting organisations

- (1) The Committee may grant a sporting organisation an *insurance exemption* if satisfied that the organisation will have adequate private insurance for the period for which the exemption will be in force.
- (2) An insurance exemption operates as follows:
 - (a) a premium is not payable under Part 4 by the sporting organisation in respect of the period for which the exemption is in force,
 - (b) no benefits are payable under this Act in respect of an injury suffered by a registered participant of the sporting organisation, or in respect of the death of a person as a consequence of an injury suffered by the person as such a registered participant, during the period for which the exemption is in force,
 - (c) the exemption does not affect the operation of paragraph (d) of the definition of *worker* in section 4 of the *Workplace Injury Management and Workers Compensation Act 1998* in respect of a registered participant of the organisation.
- (3) A sporting organisation has *adequate private insurance* for the period for which an insurance exemption will be in force if:
 - (a) a policy of insurance provides for payment of benefits, or indemnification of the sporting organisation in connection with a liability to pay benefits, in respect of an injury suffered by a registered participant of the sporting organisation, or in respect of the death of a

person as a consequence of an injury suffered by the person as such a registered participant, during the period for which the exemption will be in force, and

- (b) those benefits are of no lesser amount than the benefits that would be payable under this Act in respect of the injury or death, and
 - (c) the insurer under the policy of insurance is a body corporate that is authorised to carry on insurance business under the *Insurance Act 1973* of the Commonwealth.
- (4) An insurance exemption may be granted for a period of up to 12 months and may be granted by way of renewal or further renewal for a further period or further periods of up to 12 months.
 - (5) On each occasion of the grant or renewal of an insurance exemption, there is payable by the sporting organisation a levy of 10% of the amount that the Committee determines to be the amount that would otherwise be determined for and payable by the organisation as premium under Part 4 in respect of the period for which the insurance exemption will be in force.
 - (6) The levy is due and payable as required by a notice sent to the sporting organisation by the Committee. If the levy is not paid as required by the notice, the insurance exemption is of no effect while the levy remains unpaid.
 - (7) A levy payable under this section is payable to the Committee for payment into the Fund.
 - (8) The Committee must cancel an insurance exemption by notice in writing to the sporting organisation if the Committee is satisfied that the organisation does not or will not have adequate private insurance for any period for which the exemption is in force.
 - (9) The Committee may cancel an insurance exemption by notice in writing to the sporting organisation for any other reason that the Committee considers sufficient. The Committee must first give the sporting organisation a reasonable opportunity to make written submissions to the Committee on the matter.

[2] Section 11 Establishment of Sporting Injuries Fund

Insert “or section 5A” after “Part 4” in section 11 (2) (a).

3.2 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 4 Definitions

Omit “registered player” from paragraph (d) of the definition of *worker* wherever occurring.

Insert instead “registered participant”.

Schedule 4 Miscellaneous amendments

(Section 3)

4.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 44 Early notification of workplace injury

Insert “or the Authority” after “the insurer” in section 44 (2).

[2] Section 44 (2)

Omit “that seems to be a significant injury”.

Insert instead “in the manner prescribed by the regulations”.

[3] Section 44 (3) and (3A)

Omit section 44 (3). Insert instead:

- (3) If an employer has given notice to the insurer in accordance with subsection (2) of a workplace injury to a worker, the insurer must forward that notice to the Authority in accordance with the regulations.
- (3A) If an employer has given notice to the Authority in accordance with subsection (2) of a workplace injury to a worker:
 - (a) the Authority must as soon as practicable forward that notice to the insurer, and
 - (b) the notice given to the Authority is taken to be notice given to the insurer for the purposes of the employer’s policy of insurance.

[4] Section 44 (4)

Omit “Subsections (2) and (3)”. Insert instead “Subsection (2)”.

[5] Section 320 Appointment of approved medical specialists

Insert after section 320 (5):

- (6) A matter or thing done or omitted to be done by an approved medical specialist in the exercise of functions under this Act does not, if the matter or thing was done or omitted in good faith, subject the approved medical specialist personally to any action, liability, claim or demand.

4.2 Workers Compensation Act 1987 No 70

Section 160 Recovery of excess from employer

Insert after section 160 (8):

- (9) Without limiting the operation of that provision, the regulations referred to in paragraph (b) of the definition of *prescribed excess amount* in subsection (1) may prescribe different amounts (or no amount) according to the period within which the employer gave notice of the injury concerned.

4.3 Occupational Health and Safety Act 2000 No 40

Section 86 Notification of accidents and other matters

Insert after section 86 (1):

- (1A) Despite subsection (1), an occupier is not required to give notice under this section if the occupier has given notice of the occurrence in accordance with section 44 (2) of the *Workplace Injury Management and Workers Compensation Act 1998*.

[Second reading speech made in—

Legislative Assembly on 14 November 2002

Legislative Council on 4 December 2002]

BY AUTHORITY
