



New South Wales

Workers Compensation Legislation Amendment (Benefits) Act 2008 No 118

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New South Wales

Workers Compensation Legislation Amendment (Benefits) Act 2008 No 118

Act No 118, 2008

An Act to amend the *Workers Compensation Act 1987* to make further provision for benefits payable under the Act and workers compensation insurance. [Assented to 10 December 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Workers Compensation Legislation Amendment (Benefits) Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

4 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83

The *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which the Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

[1] Section 25 Death of worker leaving dependants

Omit “and the worker leaves any dependants wholly dependent for support on the worker,” from section 25 (1).

[2] Section 25 (1) (a)

Omit the paragraph. Insert instead:

- (a) the amount of \$425,000 (the *lump sum death benefit*), which is to be apportioned among any dependants who are wholly or partly dependent for support on the worker or (if there are no such dependants) paid to the worker’s legal personal representative, and

[3] Section 26

Omit sections 26–27A. Insert instead:

26 Funeral expenses

If compensation is payable under this Division for a death resulting from an injury, the employer must pay additional compensation equal to reasonable funeral expenses not exceeding \$9,000 or such other amount as may be prescribed by the regulations.

[4] Section 29 Apportionment of payments between dependants

Insert after section 29 (1):

- (1A) The lump sum death benefit payable under this Division is not to be apportioned if a deceased worker leaves only one dependant (whether wholly or partly dependent on the worker for support) and the whole of the lump sum death benefit is to be paid to that one dependant.
- (1B) In apportioning the lump sum death benefit payable under this Division between 2 or more dependants, the whole lump sum death benefit is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full lump sum death benefit).

[5] Section 79 Definitions

Omit the definition of *base index number*. Insert instead:

base index number means:

- (a) in respect of an adjustable amount that is the amount specified in section 25 (1) (a)—the number 212.1, and
- (b) in respect of any adjustable amount that is an amount specified in section 66 or 67—the number declared by the regulations to be the base index number for that adjustable amount, and
- (c) in respect of any other adjustable amount—the number 130.8.

[6] Section 81 Rounding off

Omit “section 25” from section 81 (1). Insert instead “section 25 (1) (a)”.

[7] Section 85 Payments to Public Trustee for benefit of beneficiary

Insert “a worker’s legal personal representative or” after “unless paid to” in section 85 (1) (a).

[8] Section 168A

Insert after section 168:

168A Optional alternative method of calculating premium for large employers

- (1) An insurance premiums order may fix (as an *optional alternative method*) an alternative method for calculating the premium payable for a policy of insurance by an employer who is classified under the order as a large employer (or a person who proposes to become such an employer).
- (2) An optional alternative method for calculating premium applies to an employer only if:
 - (a) the employer satisfies any criteria established by the insurance premiums order for eligibility for the optional alternative method, and
 - (b) the Nominal Insurer has, on the application of the employer, approved of the optional alternative method applying to the employer for the time being.
- (3) The Nominal Insurer may revoke an approval under this section at any time.

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- (4) If an optional alternative method applies to an employer, that method applies for the purpose of calculating the relevant premium payable by the employer instead of any method that would otherwise apply to the employer under the insurance premiums order.

[9] Section 172A

Insert after section 172:

172A Security deposit or guarantee for payment of premium—optional alternative premium calculation method

- (1) The Nominal Insurer may require an employer who is or was insured under a policy of insurance the premium for which was determined by an optional alternative method (as referred to in section 168A) to have on deposit with the Nominal Insurer the employer's required deposit in respect of the policy, and the employer must:
- (a) deposit with the Nominal Insurer such amount as the Nominal Insurer determines and notifies the employer to be the employer's required deposit in respect of the policy of insurance concerned, and
 - (b) deposit with the Nominal Insurer, at such time or times as the Nominal Insurer may direct by notice to the employer, such additional amount or amounts as the Nominal Insurer determines to be necessary to ensure that the amount the employer has on deposit under this section is the employer's required deposit for the time being.

Maximum penalty: 100 penalty units.

- (2) The Nominal Insurer is to hold money on deposit under this section on trust for the payment and satisfaction of the employer's liability to pay any premium (including any adjustment of premium) payable in respect of the policy of insurance to which the money held on deposit relates.
- (3) An amount of money deposited with the Nominal Insurer under this section is not liable to be attached or levied on or made subject to any debts of or claims against the employer making the deposit, except as provided by subsection (2).
- (4) The Nominal Insurer may at any time refund to an employer who has money on deposit under this section any amount by which the employer's deposit exceeds the employer's required deposit for the time being.

- (5) An employer must comply with any written direction of the Nominal Insurer to provide the Nominal Insurer with specified information (including actuarial information) for the purpose of enabling the Nominal Insurer to determine the employer's required deposit in respect of a policy of insurance from time to time.

Maximum penalty: 50 penalty units.

- (6) Sections 214–215A apply to and in respect of an amount of money deposited with the Nominal Insurer under this section as if:

- (a) the amount deposited were deposited pursuant to an obligation imposed under Division 5 (Self-insurers) of Part 7, and
- (b) the employer were a self-insurer while the employer holds a policy of insurance in respect of which the amount is held on deposit, and
- (c) a reference in those provisions to the Authority were a reference to the Nominal Insurer.

- (7) An employer who has deposited an amount of money with the Nominal Insurer under this section is entitled to a refund of the amount so deposited and standing to the employer's credit with the Nominal Insurer:

- (a) on the expiration of 3 months after service on the Nominal Insurer of a written request for the refund, and
- (b) on satisfying the Nominal Insurer that the employer's liability referred to in subsection (2) has been discharged or adequately provided for.

- (8) In this section:

employer includes a former employer.

required deposit in respect of a policy of insurance means the amount fixed by or determined in accordance with the relevant insurance premiums order as the required deposit for the policy.

[10] **Schedule 6 Savings, transitional and other provisions**

Insert as Part 19F:

**Part 19F Provisions consequent on enactment of
Workers Compensation Legislation
Amendment (Benefits) Act 2008**

1 Definition

In this Part:

2008 amending Act means the *Workers Compensation Legislation Amendment (Benefits) Act 2008*.

2 Changes to death benefit

- (1) The amendments made by the 2008 amending Act with respect to compensation payable under Division 1 (Compensation payable on death) of Part 3 (a *death benefit*) extend to deaths that occur on or after 24 October 2007 (whenever the injury occurred), but not to a death resulting from an injury received before 30 June 1987.
- (2) In the case of a death benefit that is payable to a worker's legal personal representative in respect of death occurring before the commencement of this clause, the regulations may make provision for payment of the death benefit to any beneficiary or creditor of the deceased worker's estate (instead of to the legal personal representative) where administration of the deceased's estate is finalised before or within 6 months after the commencement of this clause.
- (3) Regulations under subclause (2) may extend to compensation payable under section 10 (a) or 26 (a) of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

[11] **Schedule 6, Part 20**

Insert at the end of clause 1 (1):

Workers Compensation Legislation Amendment (Benefits) Act 2008

Schedule 2 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

(Section 4)

[1] Section 11 Provisions relating to compensation for injury or death

Omit section 11 (2A).

[2] Section 11 (4)–(4B)

Omit section 11 (4). Insert instead:

- (4) The compensation payable under subsection (2) to each dependant of a fire fighter may be apportioned by the Authority.
- (4A) The compensation payable under subsection (2) is not to be apportioned if a fire fighter leaves only one dependant (whether wholly or partly dependent on the fire fighter for support) and the whole of the compensation payable under subsection (2) is to be paid to that one dependant.
- (4B) In apportioning the compensation payable under subsection (2) between 2 or more dependants, the whole of the amount payable is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full amount of the compensation payable under subsection (2)).

[3] Section 27 Provisions relating to compensation for injury or death

Omit section 27 (2A).

[4] Section 27 (4)–(4B)

Omit section 27 (4). Insert instead:

- (4) The compensation payable under subsection (2) to each dependant of a worker may be apportioned by the Authority.
- (4A) The compensation payable under subsection (2) is not to be apportioned if a worker leaves only one dependant (whether wholly or partly dependent on the worker for support) and the whole of the compensation payable under subsection (2) is to be paid to that one dependant.
- (4B) In apportioning the compensation payable under subsection (2) between 2 or more dependants, the whole of the amount payable is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full amount of the compensation payable under subsection (2)).

[5] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1A (1):

Workers Compensation Legislation Amendment (Benefits) Act 2008 to the extent that it amends this Act

[6] Schedule 1, Part 5

Insert after Part 4:

Part 5 Workers Compensation Legislation Amendment (Benefits) Act 2008

5 Definition

In this Part:

2008 amending Act means the *Workers Compensation Legislation Amendment (Benefits) Act 2008*.

6 Changes to death benefit

The amendments made by the 2008 amending Act with respect to compensation payable under section 11 (2) or 27 (2) extend to deaths that occur on or after 24 October 2007 (whenever the injury occurred), but not to a death resulting from an injury received before 30 June 1987.

[Agreement in principle speech made in Legislative Assembly on 26 November 2008
Second reading speech made in Legislative Council on 3 December 2008am]

BY AUTHORITY