

[Act 1998 No 86]



New South Wales

Workplace Injury Management and Workers Compensation Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*
The *Workers Compensation Legislation Amendment Bill 1998* is cognate with this Bill.

Overview of Bill

The object of this Bill is to establish a workplace injury management and workers compensation system with the following objectives:

- (a) to assist in securing the health, safety and welfare of workers and in particular preventing work related injury,
- (b) to provide:
 - prompt treatment of injuries, and
 - effective and proactive management of injuries, and
 - necessary medical and vocational rehabilitation following injuries,

in order to assist injured workers and to promote their return to work as soon as possible.

* Amended in committee—see table at end of volume.

- (c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,
- (d) to be fair, affordable, and financially viable,
- (e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,
- (f) to deliver the above objectives efficiently and effectively.

Outline of provisions

Chapter 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the system objectives of the workplace injury management and workers compensation system established by the proposed Act.

Clause 4 defines words and expressions used in the proposed Act. The principal definitions of *injury* and *worker* are the same as in the *Workers Compensation Act 1987* ("the 1987 Act").

Clause 5 deems certain persons to be workers (in line with the existing provisions of the 1987 Act).

Clause 6 continues certain other interpretative provisions from the 1987 Act.

Clause 7 provides that the proposed Act binds the Crown.

Clause 8 preserves the operation of other workers compensation legislation.

Clause 9 provides for the Minister and the WorkCover Authority to enter into agreements with workers compensation insurers for the purpose of facilitating the implementation of the new scheme (including provisions relating to the way in which the Minister and the Authority will exercise their functions under the proposed Act and the payment of compensation by the State to insurers for adverse effects on insurers of future changes to the scheme).

Chapter 2 Administration

Part 1 Workers Compensation Advisory Council of New South Wales (clauses 10–13)

The Part establishes the Workers Compensation Advisory Council of New South Wales. The Advisory Council is made up of 10 voting members (5 representatives of employers and 5 representatives of employees), 2 non-voting members to represent insurers, and the General Manager of the Authority (who can vote in certain circumstances to resolve a deadlock). The Advisory Council has broad functions to advise and formulate recommendations to the Minister on workers compensation and occupational health and safety matters.

Part 2 WorkCover Authority of New South Wales (clauses 14–23)

Division 1 Constitution of Authority

Division 1 provides for the constitution of the WorkCover Authority. The constitution of the Authority is the same as it currently is under the *WorkCover Administration Act 1989* (which is to be repealed). The Authority has a Board consisting of the General Manager and 6 part-time directors.

Division 2 Management of Authority

The Division deals with the management of the Authority by its Board. The Board is required to have regard to the general policies of the Advisory Council. The affairs of the Authority are managed by the General Manager.

Division 3 Functions of Authority

The Division deals with the functions of the Authority. General functions and specific functions are provided for.

Part 3 Workers Compensation Premiums Rating Bureau of New South Wales (clauses 24–27)

The Part establishes the Premiums Rating Bureau and sets out its functions. The Rating Bureau consists of members appointed by the Minister on the nomination of licensed insurers. The principal function of the Rating Bureau

is to determine and submit to the Authority a proposed methodology to be used for the calculation of the risk premium component of premiums for workers compensation insurance policies.

Part 4 Occupational Health and Safety Council of New South Wales (clauses 28-31)

The Part re-enacts provisions of the *WorkCover Administration Act 1989* that establish and provide for the functions of the Occupational Health and Safety Council. The Council advises the Advisory Council and the Authority on matters relating to occupational health and safety.

Part 5 Industry Reference Groups (clauses 32, 33)

The Part provides for the establishment by the Advisory Council of Industry Reference Groups. Industry Reference Groups have such functions as the Advisory Council provides in their terms of reference.

Part 6 Financial provisions (clauses 34-40)

Division 1 WorkCover Authority Fund

The Division re-enacts provisions of the *WorkCover Administration Act 1989* that establish the Workcover Authority Fund, provide for payments into and out of the Fund and for the investment of money in the Fund. The Fund is used to pay the administrative costs of the 1987 and 1998 Acts.

Division 2 Contributions to WorkCover Authority Fund

The Division requires the Authority to assess the amount needed to be contributed to the WorkCover Authority Fund from time to time and provides for contributions to the Fund by licensed insurers, former licensed insurers and self-insurers.

Division 3 Financial year of Authority

The Division provides for the financial year of the Authority.

Chapter 3 Workplace injury management

The Chapter (clauses 41–59) deals with workplace injury management and provides for the following:

- All licensed insurers and self-insurers are required to establish injury management programs (programs that integrate all aspects of injury management).

- An injured worker is required to notify the employer of a workplace injury as soon as possible after the injury happens and the employer is required to notify the insurer within 48 hours (for significant injuries, ie injuries likely to result in the worker being incapacitated for more than 7 days) or within 7 days for other injuries.
- Within 3 days of being notified of a significant injury to a worker, the insurer must initiate action under its injury management program (including making contact with the worker, the employer and, if appropriate, and reasonably practicable, the worker's treating doctor). In those significant injury cases, the insurer must, in consultation with the worker and the employer, establish an injury management plan for the worker.
- Both the injured worker and the employer are required to participate and co-operate in the establishment of, and comply with, the injury management plan for the worker. The worker must be informed by the insurer of the consequences for the worker of non-compliance with the injury management provisions of the Chapter.
- An injured worker is required to make all reasonable efforts to return to work with the pre-injury employer.
- An employer is required to provide suitable employment for an injured worker who is able to return to work.
- An injury management plan can provide for the payment by the insurer on a special advance basis of certain treatment costs, including costs incurred before a claim for compensation is made or liability is determined. The costs of the worker's nominated treating doctor and other treatment under the injury management plan would qualify for those special advance payments.
- Second-injury arrangements, under which the employment of injured workers is encouraged by providing financial incentives to their employers in connection with insurance liabilities arising from further injuries to the worker.
- The establishment of return-to-work programs by employers.
- Establishment and co-ordination by the Authority of vocational re-education and rehabilitation schemes for injured workers.

- Sanctions for non-compliance with the Chapter by insurers, employers and injured workers. In the case of employers, the sanctions involve a possible increase in their insurance premium costs. In the case of workers, the sanctions involve a worker forfeiting weekly compensation for any period of unreasonable failure to comply after a request from the insurer (written notice of cessation is required together with a statement of reasons and the action required for a resumption of weekly payments).

Chapter 4 Workers compensation

Part 1 Compensation—general (clause 60)

The Part provides that a worker who has received an injury (and, in the case of the death of the worker, his or her dependants) is entitled to receive compensation from the worker's employer in accordance with the 1987 Act. Sections 9–87C of, and Schedule 6 to, the 1987 Act, as amended by the cognate *Workers Compensation Legislation Amendment Act 1998*, contain the relevant provisions relating to workers compensation liability and benefits and to common law remedies.

Part 2 Compensation—claims and proceedings (clauses 61–142)

Division 1 Notice of injury etc and claims for compensation

The Division re-enacts provisions transferred from the 1987 Act relating to the giving of notice of injury and the making of claims for workers compensation by injured workers or their dependants. The provisions have been modified to take account of the complementary notice and claim provisions in Chapter 3 and to restrict claims made more than 3 years after an entitlement to make the claim arose to claims in respect of an injury resulting in death or serious and permanent disablement.

Division 2 Administration by insurers of claims for compensation or damages

The Division re-enacts provisions transferred from the 1987 Act relating to the administration of claims by insurers. However, existing provisions relating to a claims administration manual (and directions to insurers) by the WorkCover Authority and the notification of particulars of claims to the WorkCover Authority will not apply to the new licensed insurers under the proposed Act.

Division 3 Conciliation of disputes by conciliator

The Division re-enacts provisions transferred from the 1987 Act relating to the conciliation of disputes on new claims by conciliators employed in the Department of Industrial Relations. The provisions have been modified to make minor alterations to the administrative arrangement for their employment (and that of the Principal Conciliator), to alter the entitlement of a party to a dispute to obtain a full certificate relating to the conciliation of the dispute and to provide for the payment of the costs of conciliation by the employer.

Division 4 Special provisions with respect to weekly payments of compensation

The Division re-enacts provisions transferred from the 1987 Act relating to the prompt commencement of weekly payments of compensation and to directions by conciliators with respect to those weekly payments. Provisions with respect to directions relating to the discontinuation of weekly payments have not been re-enacted.

Division 5 Restrictions on commencing court proceedings

The Division re-enacts provisions transferred from the 1987 Act relating to restrictions on the commencement of court proceedings to provide an opportunity for conciliation of a dispute. The period of the restriction with respect to weekly payments is increased from 21 days to 35 days after referral to conciliation.

Division 6 Proceedings before the Compensation Court

The Division re-enacts provisions transferred from the 1987 Act relating to court proceedings.

Division 7 Medical examinations and disputes

The Division re-enacts provisions transferred from the 1987 Act relating to medical examinations and disputes. The provisions replace an existing provision relating to reference of medical questions to medical practitioners by the parties with a provision relating to the reference of medical questions to a medical specialist chosen from a list specially approved by the Advisory Council. A certificate of the specialist on a finding on which the parties have agreed to be bound when making the reference will be conclusive in workers compensation proceedings.

Division 8 Prohibited conduct relating to touting for claims

The Division re-enacts provisions transferred from the 1987 Act relating to touting for claims.

Chapter 5 Workers compensation insurance

Part 1 Application of Chapter (clause 143)

The Part provides that the Chapter applies to insurance for any period after 30 September 1999. Part 2 (Insurance policies) does not apply to an employer who has a policy under the 1987 Act for any period up to 30 September 2000.

Part 2 Insurance policies (clauses 144–156)

The Part requires employers to have workers compensation insurance and provides for various duties of insurers with respect to the issue and renewal of workers compensation insurance policies. A new provision requires insurers to give notice of the expiration of insurance policies.

Part 3 Insurance premiums (clauses 157–171)

The Part deals with the premiums payable for workers compensation insurance policies. It differs significantly from the parallel provisions of the 1987 Act. The 1987 Act provided for premiums to be set by Insurance Premiums Orders. The new Act will require insurers to file their premiums with the Authority. The Authority cannot reject the premiums filed by an insurer unless of the opinion that the premiums will not be fully funded. Insurers will be required to use a risk premium calculation methodology approved by the Authority. The Rating Bureau is given the function of formulating and submitting to the Authority for approval a methodology for calculating risk premium. The Authority cannot reject a methodology submitted by the Rating Bureau unless it will not fully fund claims liabilities, or it will significantly exceed the amounts needed to fully fund claims liabilities, or it fails to minimise, as far as reasonably practicable, cross-subsidy between premium rating groups.

Other provisions deal with payment of premiums by instalments, recovery of unpaid premiums, cancellation of a policy for non-payment of a premium, the keeping and furnishing of information needed for the calculation of premiums, and the evasion of correct premiums.

Part 4 Premium rebates and deficit reduction (clauses 172–174)

The Part allows the Authority to direct the allowance by licensed insurers to employers of a rebate to offset any amount by which average premiums in the year beginning 1 October 1999 will exceed 2.8% of the wages in respect of which the premiums are calculated. Any such rebate is payable out of the managed funds under the 1987 Act. The Part goes on to provide for the payment of a levy by licensed insurers under the 1998 Act to fund any overall deficit that may arise in the managed funds under the 1987 Act (the amount of any such levy will be included as a component in premiums payable by employers holding policies of insurance with the licensed insurers under the 1998 Act).

Part 5 Licensing of insurers (clauses 175–189)

The Part provides for the licensing of workers compensation insurers and follows the parallel provisions of the 1987 Act, with appropriate changes to provide for private underwriting.

Part 6 Self-insurers (clauses 190–199)

The Part provides for the licensing of self-insurers and follows the parallel provisions of the 1987 Act.

Part 7 Defaulting insurers (clauses 200–202)

The Part deals with the declaration as a defaulting insurer of any insurer licensed under the 1998 Act or formerly licensed under the 1926 Act who is unable to meet claims or liabilities under workers compensation policies of insurance and for the payment of those claims and liabilities out of the Guarantee Fund established under Part 8.

Part 8 Insurers' Guarantee Fund (clauses 203-217)

The Part follows parallel provisions of the 1987 Act and provides a scheme for the payment of claims and liabilities against insolvent insurers who are licensed insurers or insurers formerly licensed under the 1926 Act, and for the establishment of a Guarantee Fund for the purpose (to be contributed to by licensed insurers).

Part 9 Uninsured Liability and Indemnity Scheme (clauses 218–230)

The Part continues the Uninsured Liability and Indemnity Scheme from the 1987 Act. The Scheme provides for the payment by the Authority of claims for workers compensation when the employer concerned was uninsured at the relevant time, cannot be found or was a self-insurer at the relevant time.

Chapter 6 Miscellaneous

The Chapter (**clauses 231–249**) re-enacts miscellaneous provisions from the 1987 Act relating to matters such as the posting of summaries of the proposed Act at workplaces, a worker's right to information, the prohibition on contracting out of the proposed Act, the non-assignability of compensation, the service of documents, the powers of entry of Workcover officers, exculpation from personal liability for the members of the various bodies established under the proposed Act, provisions relating to offences and the making of regulations. The Chapter also includes the repeal of the *WorkCover Administration Act 1989*.

Schedule 1 Deemed employment of workers

The Schedule re-enacts provisions transferred from the 1987 Act that deem the relationship of employer and worker to exist in certain circumstances.

Schedule 2 Provisions relating to Advisory Council

The Schedule contains provisions with respect to the procedures and membership of the Advisory Council.

Schedule 3 Provisions relating to Board of Directors

The Schedule contains provisions with respect to the procedures and membership of the Board of Directors of the Authority.

Schedule 4 Provisions relating to Rating Bureau

The Schedule contains provisions with respect to the procedures and membership of the Rating Bureau.

**Schedule 5 Provisions relating to Occupational Health
and Safety Council**

The Schedule contains provisions with respect to the procedures and membership of the Occupational Health and Safety Council.

Schedule 6 Provisions relating to appointed conciliators

The Schedule contains provisions with respect to the appointment of conciliators from outside the Public Service.