

[Act 1996 No 120]



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Workers Compensation Act 1987*, the *Occupational Health and Safety Act 1983*, the *Construction Safety Act 1912*, the *Dangerous Goods Act 1975* and certain other Acts to make the changes listed below.

The *Workers Compensation Act 1987* is amended as follows:

- (a) to limit payment of workers compensation to claims where work is a substantial contributing factor,
- (b) to remove fault restrictions on workers compensation coverage on journeys to and from work,
- (c) to provide for the discontinuation of weekly payments after 2 years where the worker is not seeking suitable employment,
- (d) to reduce maximum lump sum benefits by 25%,

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

Explanatory note

- (e) to exclude pre-existing disabilities from the assessment of lump sum compensation for permanent injuries (by extending an existing provision that currently applies only to back, neck and pelvis injury),
- (f) to establish new arrangements for conciliation of disputes about Compensation, including arrangements for compulsory conciliation before court proceedings can be commenced,
- (g) to provide that the reports and certificates of medical panels are prima facie evidence as to the worker's condition and to impose limitations on the admission of other evidence about a worker's condition where a medical panel report or certificate has been admitted,
- (h) to authorise the making of regulations to regulate advertising of services provided by lawyers and agents in relation to workers compensation claims,
- (i) to change the workers compensation claims excess payable by the employer from \$500 to 2 weeks compensation,
- (j) to authorise court rules and regulations about disclosure of medical evidence to include provision to exclude medical evidence not disclosed in accordance with the rules or regulations,
- (k) to transfer to the Public Trustee certain functions of the WorkCover Authority concerning administration of compensation payments made in respect of deceased workers,
- (l) to make minor amendments to procedural matters affecting the making of a claim,
- (m) to include as deemed workers covered by the Act participants in workplace based training schemes prescribed by the regulations,
- (n) to increase the penalty for a failure to keep a register of workplace injuries as required by the Act,
- (o) to provide for the banning of cost recovery by legal practitioners who are directors of or who have a financial interest in a compensation claims agent who has persistently engaged in prohibited claims touting activities, and to make other minor and clarifying amendments to claims touting provisions,
- (p) to make general insurers and insurance brokers liable for misleading representations that induce employers to believe that comprehensive business insurance packages include or do not require workers compensation insurance,

Explanatory note

- (q) to enable rules of the Compensation Court or the regulations to require an application commencing proceedings in the Compensation Court to be accompanied by evidence that certain requirements imposed by various provisions of the Act as to when proceedings can be commenced have been complied with,
- (r) to bring the provision of the Act that sets the rate of interest to be paid on common law workers compensation damages into line with the equivalent provision of the *Motor Accidents Act 1988*,
- (s) to disapply for the period between 78 weeks after injury and the payment of compensation for 104 weeks provisions of the Act applying in relation to coal miners that limit the rates of weekly payments of compensation for incapacity for work to the rates applicable under the former Act (before the commencement of the current Act),
- (t) to insert a regulation-making power to enable any of the amendments to be made by this Bill to be modified or disapplied in their application to coal miners,
- (u) to repeal a provision that imposes 5% further thresholds on hearing loss claims (in addition to the initial 6% loss threshold),
- (v) to make minor miscellaneous and clarifying amendments to certain provisions,
- (w) to make consequential amendments including to enact savings and transitional provisions.

Amendments to other Acts:

- (a) the *Compensation Court Act 1984* is amended to require consultation with employer and employee organisations on the appointment of medical referees for the purposes of the *Workers Compensation Act 1987*,
- (b) the *Construction Safety Act 1912* is amended to authorise the suspension of a powderman's certificate of competency on the ground of a person's history of violence or threats of violence, and to authorise the refusal of such a certificate on that ground or on the ground of there being an apprehended violence order in force against the person,
- (c) the *Dangerous Goods Act 1975* is amended to authorise the refusal or suspension of various explosives licences and permits on the ground of a person's history of violence or threats of violence or the existence of an apprehended violence order against the person,

Explanatory note

- (d) the *Industrial Relations Act 1996* is amended to provide a right of appeal to a Full Bench of the Industrial Relations Commission against the acquittal of a person for an alleged offence against occupational health and safety legislation,
- (e) the *Occupational Health and Safety Act 1983* is amended as follows:
- to give inspectors under that Act power to require persons to provide information, documents and evidence about contraventions of the Act and certain related Acts,
 - to change the requirements under that Act that prevent places and things involved in a dangerous workplace occurrence being moved or interfered with until midnight on the first working day after the day on which the occurrence was notified, so that the requirements will apply only until midnight on the next day (whether or not that day is a working day),
 - to remove the automatic stay that applies to a prohibition notice issued under that Act (a notice prohibiting activities that carry an immediate risk to health or safety) when a review of the notice is applied for and instead provide for an application for a stay to be made to an Industrial Magistrate,
- (f) the *WorkCover Administration Act 1989* is amended to provide for the payment out of the WorkCover Authority Fund of the costs associated with conciliation officers under the *Workers Compensation Act 1987*,
- (g) the *WorkCover Legislation Amendment Act 1995* is amended to delete the following uncommenced amendments:
- an amendment to the *Workers Compensation Act 1987* that would impose a 3-year limit on weekly payments of workers compensation on stress claims,
 - an amendment to the *Workers Compensation Act 1987* that would entitle a party to a conciliation conference to legal representation,
 - an amendment to the *Workers Compensation Act 1987* that would enable an employer to require the employer's workers compensation insurer to defend a workers compensation claim made against the employer,
 - an amendment to the *Compensation Court Act 1984* that will be overtaken by the amendments to that Act referred to above,

- (h) the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* is amended to provide for the payment of workers compensation to emergency service workers and rescue association workers for damage, destruction or loss of personal property on their person, and vehicles, equipment and things in their possession while carrying out an authorised activity, and personal property and vehicles while on a journey to or from an authorised activity,
- (i) the *Workers' Compensation (Dust Diseases) Act 1942* is amended to close the Dust Diseases Reserve Fund under that Act.

Outline of provisions

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

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *Workers Compensation Act 1987*.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to other Acts.

Schedule 1 Amendment of Workers Compensation Act 1987

New conciliation arrangements

Schedule 1.1 makes amendments that provide new conciliation arrangements for the conciliation of disputes involving lump sum workers compensation, weekly payments of compensation and compensation for hospital, medical and other expenses. The new provisions apply to claims made after the commencement of the amendments, subject to the regulations which can change which claims the new provisions apply to and subject in the case of hospital, medical and other expenses to the phasing in of the new arrangements by regulation. The existing conciliation provisions of the Act continue to apply to claims pending at the commencement of the new provisions. Some features of the new conciliation scheme are as follows:

- The main feature of the new scheme is that court proceedings will not be able to be commenced until a dispute has been referred for conciliation. The dispute will then be screened for conciliation purposes and can be fast-tracked to the Compensation Court. A worker will not be able to refer a dispute for conciliation until a certain period has elapsed after the making of the claim (to allow a reasonable time for the assessment of the claim) unless the worker is notified that the

Explanatory note

claim is disputed. The current arrangements for weekly Compensation (under section 102, 103A and 106D) put the onus on the employer/insurer to refer disputes about weekly payments of compensation to conciliation. The current provisions for lump sum compensation (under section 106E) do not require a dispute to go to conciliation before court proceedings can be commenced and instead provide for a delay of 12 weeks after the claim is made or (in some cases) until a medical panel reports on the matter. The current provisions for hospital, medical and other expenses compensation requires only that a dispute has arisen about the compensation before court Proceedings can be commenced.

- Provision is made for the appointment of new conciliation officers from the Department of Industrial Relations (currently conciliation officers are appointed from the WorkCover Authority), and a Principal Conciliator to have (with respect to new claims) the role of the Senior Conciliation Officer.
- Different provisions will apply to legal representation before conciliation officers (so that there will be a right to representation by a legal practitioner or agent at conciliation conferences).

A number of ancillary amendments are made to increase the effectiveness of conciliation arrangements, including an amendment to section 119 to require the court to have particular regard to an unreasonable failure to participate in conciliation in assessing costs penalties.

Employment required to be substantial Contributing factor

Schedule 1.2 makes amendments to limit the payment of compensation under the Act to those situations where employment is a substantial contributing factor to the injury concerned. At present there is no requirement that employment be a contributing factor to an injury, only that the injury should have arisen out of or in the course of employment. In the case of an injury consisting of a disease or the aggravation, acceleration, exacerbation or deterioration of a disease, there is currently a requirement that employment be a contributing factor (but not a substantial contributing factor). The new requirement will not apply to injuries covered by existing special provisions for journey claims, recess claims and claims by trade union representatives. A list of examples of matters to be taken into account for the purpose of determining whether employment is a substantial contributing factor is inserted. Consequential amendments are made to a section dealing with psychological injuries that currently requires employment to be a substantial cause of such an injury before compensation is payable and to various other provisions.

Explanatory note

Journey claims

Schedule 1.3 makes amendments to the provisions that entitles a worker to compensation if the worker is injured on a journey to or from work so as to remove the exception that disentitles a worker to compensation if the injury is due to the fault of the worker and replace it with an exception that disentitles a worker to compensation if the injury is attributable to the serious and wilful misconduct of the worker. The new exception differs from a similar existing exception in section 14 that will continue to apply in all cases (not just journey injuries). The section 14 exception is more difficult to establish because it requires proof that the injury is solely attributable to the serious and wilful misconduct of the worker and does not apply where death or serious and permanent disablement results.

Reduction in maximum lump sum compensation amounts

Schedule 1.4 makes amendments that will reduce by approximately 25% the maximum lump sum benefits payable under the Act for permanent injuries and consequent pain and suffering. Under the amendments, the maximum amount payable for permanent injury will be reduced from \$132,300 to \$100,000, the maximum amount payable for 2 or more permanent injuries will be reduced from \$160,950 to \$121,000 and the maximum amount payable for pain and suffering resulting from a permanent injury will be reduced from \$66,200 to \$50,000.

Discontinuation of weekly payments after 2 years

Schedule 1.5 makes amendments to provide that weekly payments of compensation for partial incapacity or temporary permanent incapacity for work are to cease after 104 weeks of payments if the worker is not seeking suitable employment or not taking other reasonable return-to-work steps. The provision will require the worker to be given at least 12 weeks notice of proposed discontinuation of payments and to be told of the action necessary to prevent discontinuation.

Deduction for previous injuries and pre-existing conditions and abnormalities

Schedule 1.6 contains amendments to broaden the application of a provision introduced in 1995 that requires lump sum compensation payment for permanent loss to be reduced by the proportion of the loss that is attributable to previous injuries or pre-existing conditions or abnormalities. The provision currently applies only to permanent impairment of the back, neck or pelvis. The amendment will expand the provision so that it applies to all injuries for which lump sum compensation is payable. The result will be that the employer will only be liable for the part of a worker's permanent disability

Explanatory note

actually caused by the work injury. The intention is to minimise possible reluctance by employers to employ or re-employ workers with prior disabilities because of concern about being held liable for the pre-existing condition. To avoid litigation seeking to determine the precise percentage of pre-existing disability the amendments provide that where it is clear that the worker did have some pre-existing disability but there is an absence of medical evidence to ascertain the percentage, 10% of the worker's overall disability (of the bodily part or function affected) may be taken by the insurer assessing the claim or, in case of a dispute, by a conciliator or the Compensation Court as the proportion to be deducted for that purpose. The new provision will also subsume the function of section 71 of the Act, deleted by the amendments, which dealt with occupational diseases such as loss of hearing due to industrial noise and required prior losses suffered by the worker, for which compensation was already paid or payable, to be deducted from any claim for further loss.

Evidentiary value of medical panel reports and certificates

Schedule 1.7 contains amendments to provide that certificates and reports of medical panels under the Act are prima facie evidence as to a worker's condition in proceedings in the Compensation Court (to the extent that they are not already conclusive evidence under existing provisions) and that further evidence cannot be admitted on the matters of which they are evidence except with the leave of the Court given in the special circumstances of the case. A further amendment is made to enable the Court to order that costs associated with an unsuccessful attempt to admit further evidence about matters on which a medical panel or report is evidence in the proceedings are to be treated as unreasonably incurred if not reasonably justified (with the result that those costs cannot be recovered from another party or by the solicitor for the party on whose behalf they were incurred). A transitional provision is inserted to make it clear that the amendments apply to medical certificates and reports given after the commencement of the amendments whenever the injury occurred, but not to court proceedings pending or already determined.

Claims excess payable by employers

Schedule 1.8 makes an amendment that will change the workers compensation claim excess payable by an employer in respect of each weekly compensation claim against the employer from \$500 (as at present) to an amount equal to the first 2 weeks of compensation paid on the claim.

Marketing of legal and agency services

Schedule 1.9 inserts a new provision (and makes consequential transitional amendments) to give the Workcover Authority power to prevent a solicitor, solicitor corporation or firm of solicitors from being able to recover fees, costs and charges in workers compensation matters if the solicitor, a member of the firm or a voting shareholder of the solicitor corporation is a director of or has a financial interest in a workers compensation claims agent and the agent or a director or manager of the agent has persistently engaged in certain prohibited conduct (such as touting) with respect to claims. The new provision is an extension of an existing provision that enables Workcover to prevent the agent in such a case from being able to recover its fees, costs and charges.

A regulation-making power is also inserted to enable the making of regulations to control marketing (including advertising) of legal services and claims agent services that are provided in connection with claims for workers compensation.

A minor amendment is made to include a claim for the cost of provision of a hearing aid as one of the claims (a protected claim) to which the Division about prohibited conduct relating to touting for claims applies.

A further minor amendment inserts a provision to make it clear that the Division applies to conduct regarding prospective claims, whether or not a claim is ever actually made.

Transfer of WorkCover Authority functions to Public Trustee

Schedule 1.10 makes amendments that will transfer to the Public Trustee the functions of the Workcover Authority with respect to the apportionment of compensation payments between dependants of a deceased worker and with respect to the investment and administration of compensation payable on the death of a worker, compensation payable to a person who is mentally ill or under the age of 18, and certain lump sum commutation payments.

Rules and regulations with respect to medical evidence

Schedule 1.11 makes an amendment that will expand an existing power to make rules of court and regulations with respect to the disclosure of medical reports to medical referees and medical panels so that the rules or regulations can provide for the exclusion of any report that is not disclosed as required.

Making a claim for compensation

Schedule 1.12 makes amendments to clarify an existing provision by providing that an insurer or self-insurer can accept a claim for compensation made more than 6 months after the injury, accident or death concerned without the need to obtain the approval of the Authority but that the approval of the Authority is required to authorise the acceptance of a claim made more than 3 years after the injury, accident or death. Another amendment makes it clear that the claim form prescribed or approved under the Act can include an authority that authorises a provider of medical, hospital or rehabilitation services to release information relevant to the claim.

Workplace based training programs—deemed employment

Schedule 1.13 makes an amendment to provide that participants in a Commonwealth funded workplace training program prescribed by the regulations are taken to be workers employed by the person who provides the workplace based training concerned. The regulations can also declare specified payments made under the training program to be the wages, for the purposes of calculating workers compensation insurance premiums, of the participants in the scheme.

Penalty increase—requirement to keep register of injuries

Schedule 1.14 makes an amendment to increase from 20 penalty units (\$2,000) to 50 penalty units (\$5,000) the penalty for a failure by an employer to keep the register of injuries required by section 90 to be kept at factories, workshops, shops, offices, mines and quarries.

Misleading conduct by insurers and brokers

Schedule 1.15 inserts a new provision that deals with conduct by insurers and insurance brokers whereby insurance packages that are marketed as comprehensive for business do not provide workers Compensation insurance cover and do not contain a warning about this or that workers compensation insurance is compulsory for employers. The new provision makes such conduct an offence and also provides a mechanism whereby culpable insurers and brokers can be joined as co-defendants and made liable in proceedings for recovery against employers based on a failure to have workers compensation insurance when the conduct of the insurer or broker caused or significantly contributed to the failure to insure.

Explanatory note

Compliance with provisions that restrict commencement of proceedings

Schedule 1.16 amends provisions inserted in the Act by the *WorkCover Legislation Amendment Act 1995*. Those provisions prevent certain proceedings being commenced or entertained in the Compensation Court unless certain preconditions have been met (generally that a dispute has arisen and a specified period has elapsed since the dispute arose). The amendments will enable rules of the Compensation Court or regulations to be made that require an application commencing proceedings in the Court of the kind that are subject to the preconditions to be accompanied by evidence (in the form of a certificate or other information required by the rules or regulations) that the preconditions have been met, and preventing the lodgment of an application that is not accompanied by the required evidence.

Rate of interest on common law damages

Schedule 1.17 amends the provision that deals with the rate of interest payable on awards of damages in common law workers compensation matters. The amendment removes an obsolete cross-reference to the rate of interest applicable under rules of the Supreme Court and replaces it with a reference to the rate set under the provision of the *Supreme Court Act 1970* that provides for the payment of interest on Supreme Court judgment debts. The rate for workers compensation common law damages is set at three-quarters of that Supreme Court rate. The amendment brings the provision into line with the equivalent provision of the *Motor Accidents Act 1988*.

Special provisions for coal miners

Schedule 1.18 amends the special transitional provisions that apply to coal miners. Under those provisions, a coal miner who is partially incapacitated but not provided with suitable duties is entitled to benefits at the total incapacity level (*deemed total incapacity*) with no limit as to how long the entitlement can continue (until retirement). In the same circumstances, other workers are entitled to a maximum 104 weeks deemed total incapacity compensation. The rates of total incapacity benefit and deemed total incapacity benefit for coal miners remained however at the lower scale of indexed rate applicable under the former Act. In practice coal miners' accident pay entitlements top up these rates to the higher levels applicable to other workers, but only for the first 78 weeks after injury. The purpose of the amendment is to apply to coal miners the higher rates of total incapacity

Explanatory note

benefit and deemed total incapacity benefits applicable to other workers, but only during the period between 78 weeks after injury (ie the time at which accident pay top-up cuts out) and payment of compensation for 104 weeks (the maximum period of deemed total incapacity entitlement for other workers). The amendment applies only to a period of incapacity that occurs after the amendment commences and results from an injury received after the commencement of the *Workers Compensation Act 1987*.

The amendments also insert a regulation-making power to enable the regulations to modify or disapply any of the amendments made by this Bill (except the top-up compensation amendments referred to above and the journey claim amendments) in their application to coal miners.

Hearing loss claims

Schedule 1.19 makes amendments to sections 69A and 69B to remove the 5% further loss threshold for hearing loss claims, as inserted by the *WorkCover Legislation Amendment Act 1995*. The effect of the 5% further loss threshold is that having passed the initial 6% hearing loss threshold to be entitled to compensation for hearing loss a worker would be prevented from claiming for further hearing loss except in increments of loss of at least 5%. A transitional provision is inserted to provide that the amendments are taken to have commenced on the commencement of sections 69A and 69B.

Clarifications and miscellaneous amendments

Schedule 1.20 makes the following miscellaneous amendments to the Act:

- (a) Amendment [1] enables the making of regulations to require an insurer to give a copy of a notice disputing liability in respect of a claim to the claimant's employer.
- (b) Amendments [2]–[5] make minor clarifying changes to provisions dealing with regulations fixing maximum legal costs.
- (c) Amendment [6] makes it clear that an existing provision that imposes controls on the recovery of solicitor/client costs applies to costs incurred in respect of a prospective claim (whether or not a claim is ever actually made).
- (d) Amendment [7] makes it clear that the regulations relating to return-to-work plans for workers can create offences with respect to failures to comply with return-to-work plans.

Explanatory note

- (e) Amendment [8] makes it clear that an employer who fails to provide certain information (such as the employer's name and address) at the request of a worker is guilty of an offence whether or not the employer actually refuses to provide the information.
- (f) Amendment [9] amends a transitional provision inserted in 1995 to make it clear that a reference in the provision to "commencement" is a reference to the commencement of the provision to which the transitional provision applies.
- (g) Amendment [10] deals with provisions inserted by the *WorkCover Legislation Amendment Act 1995* that prevent certain proceedings being commenced or entertained in the Compensation Court unless certain preconditions have been met (generally that a dispute has arisen and a specified period has elapsed since the dispute arose). The amendment inserts a transitional provision that makes it clear that those provisions extend to apply in respect of an injury received before the commencement of the provisions, but do not apply in respect of court proceedings pending or determined as at that commencement.
- (h) Amendment [11] adds the name of this amending Act to the list of Acts in respect of which consequential savings and transitional regulations can be made.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Compensation Court Act 1984* to require the Chief Judge of the Compensation Court to consult with employer and employee organisations on proposed appointments of medical referees by the Chief Judge. A consequential amendment is made to the *WorkCover Legislation Amendment Act 1995* to delete amendments to the *Compensation Court Act 1984* that provided for the appointment as medical referees of persons nominated by employer and employee organisations.

Schedule 2.2 amends the *Construction Safety Act 1912* to broaden existing provisions that allow the refusal or suspension of a powderman's certificate of competency on the ground that the holder is the subject of an apprehended violence order, so that such a certificate will be able to be refused or suspended on the ground that the person has a history of violence or threats of violence (including stalking and intimidation). The power to suspend on that ground will only be able to be used when the person has been called upon to show cause why the certificate should not be suspended or cancelled (which carries with it mechanisms for the person to be heard by the Authority and to appeal if dissatisfied with the decision). Further amendments are made to provide that an application for a powderman's certificate can be refused on those grounds also.

Explanatory note

Schedule 23 amends the *Dangerous Goods Act 1975* to insert a new provision that authorises the WorkCover Authority to cancel or refuse to issue certain explosives licences and permits under the Act on the ground that the person cannot be trusted to deal with explosives because the person has a history of violence or threats of violence (including stalking and intimidation). The provision for cancellation requires the person to be given an opportunity to make submissions on the matter and WorkCover is authorised to suspend the licence or permit pending the making of submissions and the determination of the matter. The provision also authorises the refusal or suspension of an explosives licence or permit while a person is the subject of an apprehended violence order. The provision parallels an existing provision in the *Construction Safety Act 1912* that confers similar powers of suspension and cancellation in respect of powdermen's certificates of competency (which is also being amended by this Bill to allow suspension and cancellation on the grounds of a person's history of violence or threats of violence).

Schedule 24 amends the *Industrial Relations Act 1996* to provide a right of appeal to a Full Bench of the Industrial Relations Commission against a decision by a judicial member of that Commission or an Industrial or other Magistrate to acquit a person for an alleged offence against the *Occupational Health and Safety Act 1983* or certain associated occupational health and safety legislation. Any such appeal:

- (a) may be made by the Attorney General, Minister for Industrial Relations, DPP or the prosecutor, and
- (b) must be made within 21 days after the date of the decision appealed against or, with the leave of the Full Bench, within 3 months of that decision, and
- (c) is not to be by way of a new hearing, and
- (d) may be made if proceedings for the offence were originally instituted by an inspector under that legislation or with the consent of the Minister or other authorised officer (but may not be made if the proceedings were instituted by the secretary of an industrial organisation without any such consent).

The amendment overcomes the decision of the Court of Criminal Appeal in *CI & D Manufacturing Pty Ltd & Ors v The Registrar Industrial Court of New South Wales & Ors* given on 16 August 1996, which held that the common law rule against double jeopardy was not abrogated by rights of appeal, expressed in general terms, under the now repealed Industrial Relations Act 1991. The decision in that case applies to appeals under the *Industrial Relations Act 1996*.

Schedule 25 amends the *Occupational Health and Safety Act 1983* as follows:

- (a) Amendment [1] changes a provision that prohibits plant and areas of premises involved in dangerous occurrences from being used, moved, interfered with or disturbed. The prohibition currently applies until midnight on the following working day. The amendment changes this to midnight on the next day (whether or not the next day is a working day).
- (b) Amendments [2]–[4] insert special provisions that will authorise occupational health and safety inspectors to require a person who is believed to have information, documents or evidence about a possible contravention of the relevant legislation to give the information, documents or evidence to the inspector. The provisions contain protections against self incrimination.
- (c) Amendments [5] and [6] change the provision that provides for an automatic stay of a prohibition notice (a notice prohibiting certain workplace activities that carry an immediate risk to health or safety) when a review of the notice is applied for. The amendment removes the automatic stay and replaces it with a right to apply to a Local Court constituted by an Industrial Magistrate for an order staying the prohibition notice. A court ordered stay cannot extend past the time when notice of the result of the review of the prohibition notice is given to the applicant by the WorkCover Authority.

Schedule 2.6 amends the *WorkCover Legislation Amendment Act 1995* as follows:

- (a) Amendment [1] repeals an uncommenced amendment to the *Workers Compensation Act 1987* that would operate to impose a 3 year limit on weekly payments of compensation under that Act for psychological (stress) injuries.
- (b) Amendment [2] repeals uncommenced amendments to the *Workers Compensation Act 1987* that would operate to entitle a party to a dispute to be represented by a barrister or solicitor at a conciliation conference.
- (c) Amendments [3] and [4] repeal uncommenced amendments to the *Compensation Court Act 1984* that provided for the nomination of medical practitioners by employer and employee organisations and the Department of Health for appointment as medical referees, and equal representation on medical panels by employer and employee nominees. A further amendment is made to the Act in this Schedule to require the Chief Judge of the Compensation Court to consult with employer and employee organisations on proposed appointments of medical referees.

Schedule 27 amends the *WorkCover Administration Act 1989* to provide for payment out of the WorkCover Authority Fund of the costs incurred by the Department of Industrial Relations in relation to workers compensation conciliation officers who are officers of that Department and to transfer to that Act a provision currently in the *Workers Compensation Act 1987* that provides for payment out of the WorkCover Authority Fund of the remuneration of conciliation officers who are appointed by the Governor.

Schedule 28 amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to provide for the payment of compensation to an emergency service worker or rescue association worker in the following circumstances:

- (a) destruction, damage or loss of personal effects on the worker while carrying out an authorised activity,
- (b) destruction, damage or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the authorised activity and owned by or in the possession or custody of the worker,
- (c) destruction, damage or loss of any vehicle used to transport the worker to or from the scene of an authorised activity and owned by or in the possession or custody of the worker.

The Act already provides for this kind of compensation to be payable to bushfire fighters and the new provisions generally follow the provisions for fire fighters.

The Act also already provides for the payment of compensation to emergency service workers and rescue association workers for damage to crutches, artificial aids, spectacles and clothing.

The Act is also amended to prevent a motor vehicle insurer from increasing an insurance premium because a vehicle was damaged in circumstances in which compensation is payable. This provision parallels an equivalent provision applicable to bushfire fighters.

Schedule 2.9 amends the *Workers' Compensation (Bust Diseases) Act 1942* to close the Dust Diseases Reserve Fund under that Act. The balance in that Fund and its role as the collection fund for contributions by insurers to the liabilities that arise under that Act will be transferred to the existing Workers' Compensation (Dust Diseases) Fund under that Act.