

[Act 2002 No 124]



New South Wales

Workers Compensation Legislation Amendment Bill 2002

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Workers Compensation Act 1987* (***the 1987 Act***) to resolve cross-border jurisdictional issues concerning entitlement to, and insurance against liability for, statutory workers compensation for workers who work in more than one State by providing for the following:
 - (i) statutory workers compensation will only be payable in respect of employment that is ***connected*** with New South Wales, with State of connection generally being determined on the basis of where the worker usually works, where the worker is usually based for employment purposes, or where the employer's principal place of business in

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

- Australia is located (see proposed section 9AA in **Schedule 1.1 [1] and Schedule 1.1 [7]**),
- (ii) decisions on the question of which State a worker's employment is connected with that are made by courts of other States that have corresponding provisions in their law will be recognised in New South Wales (see proposed section 9AB in **Schedule 1.1 [1]**),
 - (iii) payment of compensation in more than one State will be prevented (see proposed section 9AC in **Schedule 1.1 [1]**),
 - (iv) an employer who insures against liability for workers compensation on the basis of a reasonable belief about the State with which employment is connected will be protected from liability that would otherwise result from not being insured in the correct State (see **Schedule 1.1 [5] and [6]**),
 - (v) consequential savings and transitional provisions (see **Schedule 1.1 [8] and [9]**),
 - (vi) repeal of superseded provisions (see **Schedule 1.1 [2] and [3]**),
- (b) to amend the *Workers Compensation Legislation Amendment Act 1995* to repeal uncommenced amendments to the 1987 Act relating to the cross-border jurisdictional issues that will be superseded by the amendments referred to in paragraph (a) (see **Schedule 1.2**),
 - (c) to amend the 1987 Act to provide a special choice of law rule in respect of a claim for common law damages for work injury against a worker's employer so that the applicable substantive law for such a claim will be the substantive law of the State in which statutory workers compensation is payable for the injury (see proposed sections 150A–150F in **Schedule 1.1 [4]**),
 - (d) to amend the 1987 Act to expand the definition of *wages* in section 174 of the Act to include the “grossed up value” (including GST) of fringe benefits, employer superannuation contributions, long service leave, lump sum payments in lieu of leave and trust distributions to working beneficiaries who are paid wages at less than market rates, and to remove current exemptions for special expenses, allowances, working directors' fees and certain other amounts (see **Schedule 2 [4]–[7]**),
 - (e) to amend the 1987 Act to introduce a provision (based on section 127 of the *Industrial Relations Act 1996*) to make a principal contractor liable for workers compensation insurance premiums and associated amounts not paid by a subcontractor unless the subcontractor supplies a statement to the effect that those amounts have been paid (see proposed section 175B in **Schedule 2 [10]**),

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- (f) to amend the 1987 Act to provide for the assessment of workers compensation insurance premiums on the basis of the grouping or related entity employers (similar to the approach adopted for pay-roll tax employer grouping) with the extension of grouping to include trusts and partnerships and provision for requiring the members of a group to be insured under the one policy, the exercise of certain insurance functions on behalf of the members of the group by a designated principal member and joint and several liability of group members (see **Schedule 2 [1]–[3], [8], [9] and [11]**),
- (g) to amend the *Sporting Injuries Insurance Act 1978* to enable the Sporting Injuries Committee to exempt a sporting organisation from participation in the sporting injuries insurance scheme under that Act if the Committee is satisfied that the organisation has private insurance that provides benefits for sporting injuries that are no less favourable than the benefits that would be payable under the Act, and to make a minor consequential amendment to the *Workplace Injury Management and Workers Compensation Act 1998* (see **Schedule 3**),
- (h) to amend section 44 of the *Workplace Injury Management and Workers Compensation Act 1998* to provide that an employer may give notice of a worker's workplace injury to the employer's insurer or to the WorkCover Authority and that the regulations may prescribe the manner in which such notice is to be given (**Schedule 4.1 [1]–[4]**),
- (i) to amend the *Workplace Injury Management and Workers Compensation Act 1998* to confer protection from personal liability on approved medical specialists for acts and omissions in good faith in the exercise of functions under that Act (see **Schedule 4.1 [5]**),
- (j) to amend section 160 of the *Workers Compensation Act 1987* (the section that deals with the recovery of excess from employers by insurers) to provide that regulations made under that section may prescribe different amounts of excess that may be recovered by an insurer according to the period within which the employer gave notice of the injury concerned (**Schedule 4.2**),
- (k) to amend section 86 of the *Occupational Health and Safety Act 2000* to provide that an occupier of a place of work is not required to give notice of an accident, occurrence or other matter under that section if the occupier has already given notice of the accident, occurrence or matter in accordance with section 44 (2) of the *Workplace Injury Management and Workers Compensation Act 1998* (**Schedule 4.3**).

Outline of provisions

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 is a formal provision giving effect to the amendments to Acts set out in Schedules 1–4.

Schedule 1 makes the amendments referred to in paragraphs (a)–(c) of the Overview.

Schedule 2 makes the amendments referred to in paragraphs (d)–(f) of the Overview.

Schedule 3 makes the amendments referred to in paragraph (g) of the Overview.

Schedule 4 makes the amendments referred to in paragraph (h)–(k) of the Overview.