

New South Wales

Workers Compensation Legislation Amendment (Trainees) Bill 2003

Explanatory note

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

Overview of Bill

Section 155 of the *Workers Compensation Act 1987 (the 1987 Act)* requires employers (other than self-insurers) to take out certain policies of insurance in respect of their liability in respect of workers employed by them. Section 158 of the Act exempts employers of certain trainees from this requirement and deems them to be holders of policies of insurance in respect of their liability with the Insurance Ministerial Corporation (the insurance premiums for these deemed policies are funded from the Consolidated Fund).

Worker is defined for the purposes of the 1987 Act and the *Workplace Injury Management and Workers Compensation Act 1998 (the 1998 Act)* in the 1998 Act (under section 2A of the 1987 Act the two Acts are construed together as if they were one Act). The definition makes it clear that apprentices are workers but does not at present specifically refer to trainees. However, it can clearly be inferred from section 158 of the 1987 Act that, as the employers of trainees need to be exempted from the insurance requirements of the 1987 Act, it is intended that they be treated as workers for the purposes of the Acts.

The objects of this Bill are:

- (a) to repeal section 158 of the 1987 Act to remove the current exemption of employers of trainees from the insurance requirements imposed under section 155 of that Act, and
- (b) to amend the 1987 Act so that employers who currently benefit from the exemption will have up to a year to comply with those requirements, and
- (c) to amend the 1998 Act to put it beyond doubt that trainees are workers for the purposes of the Acts, and
- (d) to make consequential amendments to the 1987 Act, the 1998 Act and the *Workers Compensation Regulation 2003*.

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 1 January 2004.

Clause 3 is a formal provision that gives effect to the amendments to the *Workers Compensation Act 1987* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Workplace Injury Management and Workers Compensation Act 1998* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendment to the *Workers Compensation Regulation 2003* set out in Schedule 3.

Schedule 1 Amendment of Workers Compensation Act 1987

Schedule 1 [3] repeals section 158 of the 1987 Act as described in paragraph (a) of the Overview of the Bill. This will require an employer to take out the insurance required by section 155 of the 1987 Act in respect of any person entering into a traineeship with the employer on or after 1 January 2004.

Schedule 1 [8] inserts Part 18G into Schedule 6 to the Act to achieve the object described in paragraph (b) of the Overview (proposed clause 2). Clause 2 will ensure that a person who is employing a trainee (other than an *existing worker trainee* as defined in the *Apprenticeship and Traineeship Act 2001*) immediately before the repeal will not need to obtain a policy of insurance as required by section 155 of the 1987 Act until 31 December 2004, or the end of the traineeship, whichever first occurs. The full amount of the employer's liability under the 1987 Act in respect of such a trainee and an unlimited amount in

respect of the employer's liability independently of the 1987 Act (not including a liability for workers compensation arising under any Act of another jurisdiction) for any injury to the trainee will continue to be covered until then by the policy of insurance currently deemed to be held with the Insurance Ministerial Corporation under section 158, which is continued in force for this purpose by clause 2.

Schedule 1 [4], [6] and [7] contain amendments that are consequential on the repeal of section 158 of the 1987 Act.

Schedule 1 [1], [2] and [5] contain amendments that are consequential on the amendment to the definition of *worker* described in paragraph (c) of the Overview of the Bill (see also **Schedule 2 [2]**).

Schedule 1 [9] amends clause 1 (1) of Part 20 of Schedule 6 to the 1987 Act to enable the making of savings and transitional regulations.

Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998

Schedule 2 [2] contains the amendment to the definition of *worker* in section 4 of the 1998 Act described in paragraph (c) of the Overview of the Bill.

Schedule 2 [1] and [3] contain consequential amendments.

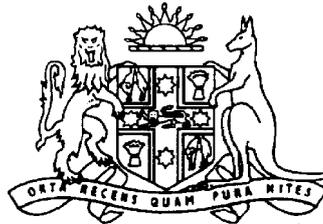
Schedule 3 Amendment of Workers Compensation Regulation 2003

Schedule 3 contains an amendment that is consequential on the repeal of section 158 of the 1987 Act. **Schedule 1 [8]** makes a consequential amendment to insert proposed clause 2 (4) of Part 18G into Schedule 6 to the 1987 Act.

Workers Compensation Legislation Amendment (Trainees) Bill 2003

Explanatory note

Explanatory note page 4



New South Wales

Workers Compensation Legislation Amendment (Trainees) Bill 2003

Contents

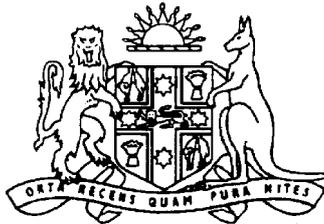
| | Page |
|--|------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Amendment of Workers Compensation Act 1987 No 70 | 2 |
| 4 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86 | 2 |
| 5 Amendment of Workers Compensation Regulation 2003 | 2 |
| Schedule 1 Amendment of Workers Compensation Act 1987 | 3 |
| Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 | 6 |
| Schedule 3 Amendment of Workers Compensation Regulation 2003 | 7 |

Workers Compensation Legislation Amendment (Trainees) Bill 2003

Contents

Page

Contents page 2



New South Wales

Workers Compensation Legislation Amendment (Trainees) Bill 2003

No. , 2003

A Bill for

An Act to amend the *Workers Compensation Act 1987* with respect to insurance for trainees; to make consequential amendments to other laws; and for other purposes.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Workers Compensation Legislation Amendment (Trainees) Act 2003*.

2 Commencement

This Act commences on 1 January 2004.

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 Workplace Injury Management and Workers Compensation Act 1998 No 86

The *Workplace Injury Management and Workers Compensation Act 1998* is amended as set out in Schedule 2.

5 Amendment of Workers Compensation Regulation 2003

The *Workers Compensation Regulation 2003* is amended as set out in Schedule 3.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

[1] Section 11 Recess claims

Omit “apprenticeship”. Insert instead “training contract”.

[2] Section 24 Illegal employment

Omit “or apprenticeship” wherever occurring.

Insert instead “or training contract”.

[3] Section 158 Insurance for trainees

Omit the section.

[4] Section 168 Insurance premiums orders

Omit section 168 (4) (b).

[5] Section 174 Records relating to wages, contracts etc to be kept and supplied

Omit “or apprenticeship” from paragraph (a) of the definition of *wages* in section 174 (9).

Insert instead “or a training contract”.

[6] Section 193 Definitions

Omit the definition of *policy of insurance* from section 193 (1). Insert instead:

policy of insurance does not include a policy of insurance of any class exempted by the regulations from this Division.

[7] Section 217 Definitions

Omit the definition of *policy* from section 217 (1). Insert instead:

policy means a policy of insurance.

| | |
|--|----|
| [8] Schedule 6 Savings, transitional and other provisions, Part 18G | 1 |
| Insert after Part 18F: | 2 |
| Part 18G Provisions consequent on enactment of 2003 trainee amendments | 3 |
| | 4 |
| 1 Definitions | 5 |
| In this Part: | 6 |
| <i>the 2003 amending Act</i> means the <i>Workers Compensation Legislation Amendment (Trainees) Act 2003</i> . | 7 |
| | 8 |
| <i>trainee</i> means a trainee within the meaning of section 158 of this Act as in force immediately before its repeal by the 2003 amending Act. | 9 |
| | 10 |
| | 11 |
| 2 Insurance for trainees | 12 |
| (1) Section 158 (2) of this Act (as in force immediately before its repeal by the 2003 amending Act) continues to have effect in relation to any person employed as a trainee immediately before that repeal until 31 December 2004, or the end of the traineeship, whichever first occurs (the <i>end of the continued insurance period</i>). | 13 |
| | 14 |
| | 15 |
| | 16 |
| | 17 |
| | 18 |
| (2) Section 158 of this Act (as in force immediately before its repeal by the 2003 amending Act) continues to apply to and in respect of a policy of insurance deemed by that section to be held by an employer in respect of a trainee referred to in subclause (1) until the end of the continued insurance period. | 19 |
| | 20 |
| | 21 |
| | 22 |
| | 23 |
| (3) The repeal of section 158 by the 2003 amending Act does not affect the validity of a policy of insurance referred to in subclause (2) to the extent that it relates to any liability of the employer with respect to that trainee referred to in section 158 (3) before its repeal that arises before the end of the continued insurance period. | 24 |
| | 25 |
| | 26 |
| | 27 |
| | 28 |
| | 29 |
| (4) Clause 50 (2) of the <i>Workers Compensation Regulation 2003</i> (as in force immediately before its repeal by the 2003 amending Act) continues to have effect in relation to the wages of a trainee referred to in subclause (1) until the end of the continued insurance period. | 30 |
| | 31 |
| | 32 |
| | 33 |
| | 34 |

[9] Schedule 6 Part 20

1

Insert at the end of clause 1 (1):

2

*Workers Compensation Legislation Amendment (Trainees)
Act 2003*

3

4

| | | |
|-------------------|---|----|
| Schedule 2 | Amendment of Workplace Injury Management and Workers Compensation Act 1998 | 1 |
| | | 2 |
| | | 3 |
| | (Section 4) | 4 |
| [1] | Section 4 Definitions | 5 |
| | Insert in alphabetical order in section 4 (1): | 6 |
| | <i>training contract</i> has the meaning it has in the <i>Apprenticeship and Traineeship Act 2001</i> . | 7 |
| | Note. A training contract is a contract entered into for the purpose of establishing an apprenticeship or traineeship. | 8 |
| | | 9 |
| | | 10 |
| [2] | Section 4 | 11 |
| | Omit “apprenticeship” from the definition of <i>worker</i> in section 4 (1). | 12 |
| | Insert instead “a training contract”. | 13 |
| [3] | Schedule 1 Deemed employment of workers | 14 |
| | Omit “apprenticeship” from clause 1. | 15 |
| | Insert instead “a training contract”. | 16 |

**Schedule 3 Amendment of Workers Compensation
Regulation 2003**

(Section 5)

Clause 50 Trainees under Australian Traineeship System

Omit the clause.

1
2
3
4
5