

[Act 1995 No 30]



New South Wales

## Workers Compensation Legislation Amendment Bill 1995

### Explanatory note

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

### Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Workers Compensation Act 1987* and certain other Acts concerned with workers compensation. The amendments are in many instances clarifications and further developments of existing provisions.

### Amendments to Compensation Act 1987

The Bill amends the *Workers Compensation Act 1987*:

- (a) to ensure that employers' workers compensation insurance fully covers the period during which common law rights were abolished (1 July 1987 to 1 February 1990) (see Schedule 1),

---

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

---

- (b) to broaden the cover provided by workers compensation insurance policies for liabilities arising independently of the Act by removing the existing restriction that limits cover to liability arising under a law of New South Wales (so that cover will extend to common law liability arising under the law of another State for example), with the broadened cover applying to any injury received at or after 4 pm on 30 June 1993 (see Schedule 1),
- (c) to require the Compensation Court to apportion pain and suffering for which compensation is payable in terms of past and future pain and suffering for the purpose of the calculation of any interest payable in respect of that compensation (see Schedule 2),
- (d) to provide that the recovery by a worker of certain damages that are only of an interim or advance nature does not disentitle the worker to workers compensation (see Schedule 3),
- (e) to change various provisions dealing with rights of contribution and apportionment among employers and insurers liable for workers compensation to clarify the circumstances in which contribution and apportionment are applicable and the basis of their calculation, and to extend to the Authority any entitlement to contribution or apportionment of a person on whose behalf the WorkCover Authority pays compensation under the Uninsured Liability and Indemnity Scheme (see Schedule 4),
- (f) to provide that a structured settlement can be made in respect of an award of damages under the *Workers Compensation Act* only if the plaintiff and defendant agree (see Schedule 5),
- (g) to change the basis of entitlement to workers compensation so that workers of this State will be entitled to compensation under the *Workers Compensation Act* wherever they are injured in Australia and to make ancillary and consequential amendments to related provisions (see Schedule 6),
- (h) to change provisions dealing with lump sum compensation:
  - (i) to further clarify the operation of the Table of Disabilities in relation to injuries involving loss of a lower limb, and
  - (ii) to remove an anomaly whereby a worker who has met the main “serious injury” threshold for recovery of common law damages for economic loss can forfeit entitlements to both lump sum compensation for non-economic loss and common law damages for non-economic loss because of a difference in the threshold applicable to the non-economic loss part of a common law claim, and

- (iii) to clarify a transitional provision dealing with the treatment of compensation paid under the former Act for part of a loss (see Schedule 7),
- (i) to ensure that a worker who is totally incapacitated after a period of partial incapacity will receive weekly compensation at the higher of the 2 rates payable in respect of total incapacity for up to 26 weeks and to clarify when the first 26 weeks of incapacity commences (see Schedule 8 (1) and (2)),
- (j) to ensure that the payment of weekly compensation to an injured worker during a period of total incapacity (after the first 26 weeks of incapacity) is, to the extent that it is based on average weekly earnings, adjusted from time to time to take account of increases in the weekly earnings the worker would have received if he or she had not been injured and had continued to be employed in the same or some similar employment (see Schedule 8 (3)–(5)),
- (k) to clarify the power of conciliation officers to direct payment of compensation where there is no genuine dispute and to make other amendments to machinery provisions concerning conciliation of disputes and the payment of compensation. at the direction of a conciliation officer (see Schedule 9),
- (l) to make it clear that the existing limitation of weekly earnings for the purposes of awards of damages for economic loss is applicable to net (rather than gross) weekly earnings (see Schedule 10),
- (m) to delay the commencement of court proceedings in the case of hearing loss claims for 3 months after the claim is made (except where all liability for the claim is denied or the proceedings are to recover weekly payments of compensation due) and to make other amendments to provisions concerned with the referral to a medical panel or referee of disputes as to a worker's condition or fitness for work (see Schedule 11),
- (n) to make it clear that the WorkCover Authority can refuse to register a compensation agreement for an occupational disease if the Authority is not satisfied that the loss to which the agreement relates is an occupational disease (see Schedule 12 (2)),
- (o) to make miscellaneous amendments with respect to the requirements for a medical certificate to accompany a claim for compensation and with respect to false information in claims (see Schedule 12 (3)–(10)),

- (p) to provide that an injured worker seeking common law damages does not have the onus of proving that certain steps by way of mitigation of damage have been taken by the worker, and that the court assessing damages does not have to take those steps into account, unless the worker has been informed of the need to take those steps (see Schedule 12 (11) and (12)),
- (q) to simplify existing provisions whereby ministers of religion are considered to be workers for workers compensation purposes (see Schedule 12 (13)),
- (r) to enable the making of regulations of a savings or transitional nature consequent on the proposed Act (see Schedule 12 (14)),
- (s) to make miscellaneous minor changes and amendments by way of statute law revision (see Schedule 12 (1) and (15)–(23)).

### **Other Acts amended**

The Bill amends other Acts as follows:

- (a) clarifying amendments and minor amendments are made to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* (see Schedule 13) and the *Workers' Compensation (Dust Diseases) Act 1942* (see Schedule 14),
- (b) a minor amendment is made to the *Law Reform (Miscellaneous Provisions) Act 1965* concerning the effect of contributory negligence on recovery and repayment of workers compensation to update a cross-reference to a provision of the *Workers Compensation Act 1987* (see Schedule 15).

Each amendment is explained in detail in the Bill in the explanatory note relating to the amendment concerned.

### **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 the *Workers Compensation Act 1987*.

**Clause 4** is a formal provision giving effect to the amendments to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

**Clause 5** is a formal provision giving effect to the amendments to the *Workers' Compensation (Dust Diseases) Act 1942*.

**Clause 6** is a formal provision giving effect to the amendment to the *Law Reform (Miscellaneous Provisions) Act 1965*.

## Schedules

**Schedules 1–12** contain the amendments to the *Workers Compensation Act 1987* described above.

**Schedule 13** contains the amendments to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* described above.

**Schedule 14** contains the amendment to the *Workers' Compensation (Dust Diseases) Act 1942* described above.

**Schedule 15** contains the amendment to the *Law Reform (Miscellaneous Provisions) Act 1965* described above.