



New South Wales

# Workers Compensation Amendment Bill 2008

## 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 1987 Act**) as follows:

- (a) to remove the need for employers paying wages of less than a certain amount (\$7,500 or such other amount as may be fixed by an insurance premiums order) to obtain a workers compensation insurance policy,
- (b) to make it clear that an employer must have a single workers compensation policy covering all the employer's workers,
- (c) to align the period for which an employer must keep wages records with parallel Victorian and Australian Taxation Office requirements,
- (d) to provide for the recovery of compliance audit costs from employers who fail to obtain workers compensation insurance,
- (e) to ensure that WorkCover has sufficient power to obtain and manage security deposits by self-insurers and former self-insurers so that ongoing workers compensation liabilities (including for dust diseases) are provided for,
- (f) to restrict new applications for licences endorsed with a specialised insurer endorsement.

## 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 the date of assent.

**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** provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendments

### Insurance arrangements

The 1987 Act requires all employers to take out workers compensation insurance to cover their liabilities to their workers.

**Schedule 1 [1]** prohibits an employer from having more than one workers compensation insurance policy in force at any one time, so that an employer will have to have just one policy covering all the employer's workers. **Schedule 1 [3]–[8]** provide for the recovery by WorkCover from an employer of an amount equal to double the amount of premium that the employer has avoided by having more than one policy of insurance.

**Schedule 1 [2]** exempts an employer from the requirement to take out a workers compensation insurance policy if the employer is not going to be paying wages above a certain level (being \$7,500 or such other amount as may be fixed by an insurance premiums order). Such an employer will be deemed to have been issued with a workers compensation insurance policy by the Nominal Insurer. If a claim is made, the employer will be required to pay an administration fee for the claim. The new arrangements will not apply to employers who employ apprentices or to group employers.

**Schedule 1 [9]** decreases from 7 years to 5 years the period for which an employer must keep wages records (to align the requirement with Victorian and Australian Taxation Office requirements).

**Schedule 1 [10]** provides for the recovery from employers who fail to obtain workers compensation insurance of compliance inspection costs incurred by an insurer or WorkCover.

### Security for self-insurer obligations

The 1987 Act provides for self-insurers to be required to place money on deposit with WorkCover to ensure that their ongoing workers compensation liabilities are provided for. Self-insurers can also be required to deposit additional funds from time to time.

**Schedule 1 [12]** extends the existing arrangements so that WorkCover will be able to require former self-insurers to place money or additional money on deposit. The amendment also makes it clear that the amount that a self-insurer or former self-insurer can be required to have on deposit is the amount required to adequately provide for all accrued, continuing, future and contingent self-insurer liabilities. The existing arrangements are also extended to cover self-insurer liabilities arising from dust diseases.

**Schedule 1 [13] and [15]–[22]** make consequential amendments.

**Schedule 1 [14]** makes it clear that interest earned on deposited money (which would otherwise be required to be paid to the self-insurer or former self-insurer concerned) can instead be applied by WorkCover in payment of extra deposits required to be made that have not been made.

#### **Miscellaneous amendments**

**Schedule 1 [11]** provides that a licence may be granted under Division 3 of Part 7 of the 1987 Act only if the licence is endorsed with a specialised insurer endorsement and granted to an existing licence holder on the expiry of a licence granted to the existing licence holder under that Division. This proposed restriction extends to an application for a licence that was made, but not determined, before the commencement of the proposed section. Any licence granted after the date that the Bill for the proposed Act was introduced into the Legislative Assembly that could not have been granted had the proposed section been in force has no effect.

**Schedule 1 [23]–[25]** enact consequential savings and transitional arrangements.

**Schedule 1 [26]** provides a savings and transitional regulation-making power.



First print



New South Wales

# Workers Compensation Amendment Bill 2008

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New South Wales

# Workers Compensation Amendment Bill 2008

No. , 2008

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## A Bill for

An Act to amend the *Workers Compensation Act 1987* to make further provision for workers compensation insurance and other matters.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Workers Compensation Amendment Act 2008</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5
<b>3 Amendment of Workers Compensation Act 1987 No 70</b>	6
The <i>Workers Compensation Act 1987</i> is amended as set out in Schedule 1.	7 8
<b>4 Repeal of Act</b>	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 155 Compulsory insurance for employers</b>	3
	Insert after section 155 (1):	4
	(1AA) An employer must not at any one time maintain in force more than one policy of insurance for the purposes of subsection (1) (ignoring any policy of insurance effected by the employer for the purposes of compliance with section 31 of the <i>Coal Industry Act 2001</i> ).	5 6 7 8 9
	Maximum penalty: 500 penalty units.	10
<b>[2]</b>	<b>Section 155AA</b>	11
	Insert after section 155:	12
<b>155AA</b>	<b>Exempt employers not required to obtain policy of insurance</b>	13
	(1) An employer is an <i>exempt employer</i> during a financial year while the employer has reasonable grounds for believing that the total amount of wages that will be payable by the employer during the financial year to workers employed by the employer will be not more than the exemption limit for that financial year.	14 15 16 17 18
	(2) An employer is not an exempt employer whenever the employer:	19
	(a) is a member of a group constituted under Division 2A, or	20
	(b) employs a person under a training contract (within the meaning of the <i>Apprenticeship and Traineeship Act 2001</i> ).	21 22
	<b>Note.</b> A <i>training contract</i> is a contract entered into for the purpose of establishing an apprenticeship or traineeship.	23 24
	(3) An employer who is an exempt employer for the whole or any part of a financial year is deemed to have obtained from the Nominal Insurer (and the Nominal Insurer is deemed to have issued) a policy of insurance in compliance with section 155 (an <i>exempt employer policy</i> ) for any period for which the employer is an exempt employer during the financial year. No premium is payable for an exempt employer policy.	25 26 27 28 29 30 31
	(4) An exempt employer policy covers the employer for any period for which the employer is an exempt employer but does not cover the employer for any period for which the employer has actually obtained a policy of insurance under section 155.	32 33 34 35
	(5) An administration fee of an amount prescribed by the regulations is payable to the Nominal Insurer by an employer in respect of	36 37

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each claim made against the employer in respect of an injury to a worker received during any period for which an exempt employer policy covers the employer.	1 2 3
(6) The regulations may make provision for or with respect to the payment of an administration fee, including provision for or with respect to any of the following:	4 5 6
(a) the period within which an administration fee must be paid,	7 8
(b) the payment of a late payment fee if an administration fee is not paid within the required period,	9 10
(c) the full or partial waiver or refund of an administration fee or late payment fee.	11 12
(7) The Nominal Insurer is entitled to recover as a debt in a court of competent jurisdiction an administration fee payable by an employer together with any late payment fee payable.	13 14 15
(8) In this section:	16
<i>exemption limit</i> for a financial year means \$7,500 or such other amount as may be fixed by an insurance premiums order as the exemption limit for that financial year.	17 18 19
<i>financial year</i> means a period of 12 months commencing on 1 July in any year.	20 21
<i>wages</i> means wages as defined in section 174 and includes any distribution to a worker as a beneficiary under a trust that would (under section 174AA) constitute wages for the purposes of section 174.	22 23 24 25
<b>[3] Section 156 Recovery of double premiums for contravention of insurance requirements</b>	26 27
Insert after section 156 (1):	28
(1A) If an employer maintains in force at any one time more than one policy of insurance for the purposes of section 155 (1) (in contravention of section 155 (1AA)), the Authority may:	29 30 31
(a) determine an amount as the amount of premium that the employer has avoided by maintaining more than one policy of insurance, and	32 33 34
(b) recover from the employer in a court of competent jurisdiction as a debt due to the Authority a sum equal to twice the amount determined under paragraph (a) or such lesser amount as the Authority may agree to accept in any particular case.	35 36 37 38 39

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<b>[4] Section 156 (2)</b>	1
Omit the subsection. Insert instead:	2
(2) The Authority may recover a sum from an employer under this section whether or not the employer has been proceeded against or been convicted for any relevant offence against section 155 (1) or (1AA).	3 4 5 6
<b>[5] Section 156 (4A)</b>	7
Insert after section 156 (4):	8
(4A) A certificate executed by the Authority and certifying that a sum specified in the certificate is the sum equal to twice the amount of premium that an employer has avoided by maintaining more than one policy of insurance in contravention of section 155 (1AA) is (without proof of its execution by the Authority) admissible in any proceedings and is evidence of the matters specified in the certificate.	9 10 11 12 13 14 15
<b>[6] Section 156 (6)</b>	16
Insert “or (1A)” after “subsection (1)”.	17
<b>[7] Section 156 (7)</b>	18
Omit “subsection (5)”. Insert instead “subsection (6)”.	19
<b>[8] Section 156B Recovery from directors of corporation—insurance requirements</b>	20 21
Omit section 156B (3) and (4). Insert instead:	22
(3) A person is a culpable director of a corporation at the relevant time if the person was a director of the corporation at any time during the contravention to which the entitlement of the Authority relates (whether or not the corporation has been proceeded against or convicted of an offence in respect of that contravention).	23 24 25 26 27 28
(4) A person is not a culpable director of a corporation if the person establishes that:	29
(a) the contravention by the corporation occurred without the person’s knowledge, or	30 31 32
(b) the person was not in a position to influence the conduct of the corporation in relation to the contravention, or	33 34
(c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.	35 36

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<b>[9]</b>	<b>Section 174 Records relating to wages, contracts etc to be kept and supplied</b>	1 2
	Omit “7 years” from section 174 (2) and (6AA) wherever occurring.	3
	Insert instead “5 years”.	4
<b>[10]</b>	<b>Section 174A Recovery of inspection costs of Authority or insurer</b>	5
	Insert “or that an employer has failed to obtain or maintain in force a policy of insurance as required by section 155 (1)” after “an employer” in section 174A (1).	6 7 8
<b>[11]</b>	<b>Section 176</b>	9
	Insert before section 177:	10
<b>176</b>	<b>Licences to be re-granted only to existing licence holders</b>	11
	(1) A licence may be granted under this Division only if the licence:	12
	(a) is endorsed with a specialised insurer endorsement, and	13
	(b) is granted to an existing licence holder on the expiry of a licence granted to the existing licence holder under this Division.	14 15 16
	(2) In this section, an <i>existing licence holder</i> means a corporation or body corporate that held a licence that was granted under this Division, and in force or suspended, immediately before the commencement of this section.	17 18 19 20
	(3) This section extends to an application for a licence that was made, but not determined, before the commencement of this section.	21 22 23
	(4) Any licence granted under this Division after the date that the Bill for the <i>Workers Compensation Amendment Act 2008</i> was introduced into the Legislative Assembly that could not have been granted had this section been in force has no effect.	24 25 26 27
<b>[12]</b>	<b>Section 213</b>	28
	Omit the section. Insert instead:	29
<b>213</b>	<b>Deposit required for self-insurers and former self-insurers</b>	30
	(1) A self-insurer who is granted a licence under this Division must on the grant of the licence deposit with the Authority an amount of money determined by the Authority in respect of the self-insurer.	31 32 33 34
	Maximum penalty: 100 penalty units.	35

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- (2) A person who is or was a self-insurer must deposit with the Authority, at such time or times as the Authority may direct by notice to the person, such additional amount or amounts as the Authority determines to be necessary to ensure that the amount the person has on deposit under this Division is the person's required deposit amount for the time being. 1  
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Maximum penalty: 100 penalty units. 7
- (3) A person who has ceased to be a self-insurer can be required to deposit money with the Authority under this section even if the amount of any previous deposit of the person has been refunded to the person under section 216. 8  
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- (4) The Authority may at any time refund to a person who has money on deposit with the Authority under this section any amount by which the person's deposit exceeds the person's required deposit amount for the time being. 12  
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- (5) A person who is or was a self-insurer must comply with any written direction of the Authority to provide the Authority with specified information (including actuarial information) for the purpose of enabling the Authority to determine the person's required deposit amount from time to time. 16  
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Maximum penalty: 50 penalty units. 21
- (6) No deposit is payable under this Division by: 22  
(a) a Government employer, or 23  
(b) any other employer approved by the Authority. 24
- (7) In this section: 25  
**required deposit amount** of a person means the amount that the Authority determines to be the amount required to adequately provide for all the accrued, continuing, future and contingent self-insurer liabilities of the person and of the person's subsidiaries. 26  
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30  
**self-insurer liabilities** of a person means: 31  
(a) any liabilities of the person under this Act in respect of workers employed by the person while a self-insurer, or 32  
33  
(b) any liabilities of the person independently of this Act (but not including a liability for compensation in the nature of workers compensation arising under any Act or other law of another State, a Territory or the Commonwealth or a liability arising under the law of another country) for injuries received by workers employed by the person while a self-insurer (including any injury that is a dust disease as defined in the *Workers' Compensation (Dust Diseases)*) 34  
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Schedule 1 Amendments

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	<i>Act 1942</i> and the aggravation, acceleration, exacerbation or deterioration of a dust disease as so defined).	1 2
<b>[13]</b>	<b>Section 214 Investment of deposits</b>	3
	Omit “self-insurer” wherever occurring. Insert instead “person”.	4
<b>[14]</b>	<b>Section 214 (4)</b>	5
	Insert after section 214 (3):	6
	(4) If a person to whom interest would otherwise be payable under this section is in breach of any obligation arising under this Division to deposit an additional amount of money with the Authority, the Authority may, instead of paying the interest to the person, apply the interest in full or partial satisfaction of the person’s obligation to make the additional deposit. Any amount of interest so applied by the Authority is taken to have been deposited with the Authority by the person concerned.	7 8 9 10 11 12 13 14
<b>[15]</b>	<b>Section 215 Alternative method of giving security</b>	15
	Omit “self-insurer” from section 215 (1), (3), (5) and (7) wherever occurring. Insert instead “person”.	16 17
<b>[16]</b>	<b>Section 215 (4)</b>	18
	Omit the subsection. Insert instead:	19
	(4) A person must comply with a requirement under subsection (3). Maximum penalty: 100 penalty units.	20 21
<b>[17]</b>	<b>Section 215A Guarantee as alternative to deposit</b>	22
	Omit “section 213 (2)” from section 215A (2). Insert instead “section 213”.	23 24
<b>[18]</b>	<b>Section 215A (3)</b>	25
	Omit “self-insurer”. Insert instead “person”.	26
<b>[19]</b>	<b>Section 216 Application and refund of deposit</b>	27
	Omit section 216 (1). Insert instead:	28
	(1) The Authority is to hold every amount of money deposited under this Division on trust for the payment and satisfaction of all claims, judgments or awards (not otherwise paid or satisfied):	29 30 31
	(a) against the person making the deposit in respect of the person’s self-insurer liabilities, and	32 33

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	(b) against any person that is a subsidiary of the person making the deposit (being a subsidiary that is or was covered for the time being by the self-insurer licence of the person making the deposit) in respect of the subsidiary's self-insurer liabilities.	1 2 3 4 5
<b>[20]</b>	<b>Section 216 (2)</b> Omit "self-insurer". Insert instead "person".	6 7
<b>[21]</b>	<b>Section 216 (3)</b> Omit "if the person ceases to be a self-insurer". Insert instead "if the person has ceased to be a self-insurer".	8 9 10
<b>[22]</b>	<b>Section 216 (4)</b> Omit the subsection. Insert instead: (4) In this section, <i>self-insurer liabilities</i> of a person has the same meaning as in section 213.	11 12 13 14
<b>[23]</b>	<b>Schedule 6 Savings, transitional and other provisions</b> Insert at the end of clause 15 (2) of Part 18C: (3) This clause continues to have effect despite the enactment of section 176 by the <i>Workers Compensation Amendment Act 2008</i> .	15 16 17 18
<b>[24]</b>	<b>Schedule 6, Part 19A</b> Insert at the end of clause 2: <b>Note.</b> Section 176 provides that a licence may be granted under Division 3 of Part 7 of this Act only if the licence is endorsed with a specialised insurer endorsement and granted to an existing licence holder on the expiry of a licence granted to the existing licence holder under that Division.	19 20 21 22 23 24 25

<b>[25] Schedule 6, Part 19D</b>	1
Insert after Part 19C:	2
<b>Part 19D Provisions consequent on enactment of Workers Compensation Amendment Act 2008</b>	3 4 5
<b>1 Single policy of insurance</b>	6
Section 155 (1AA) does not apply in respect of a policy of insurance in force immediately before the date of commencement of that subsection during the period that is the current period of insurance for the policy on that date of commencement.	7 8 9 10
<b>2 Exemption from obtaining insurance</b>	11
(1) Section 155AA does not apply in respect of a financial year before the financial year commencing on 1 July 2008.	12 13
(2) For the purposes of this clause and section 155AA, the period after 4 pm on 30 June 2008 forms part of the financial year commencing on 1 July 2008.	14 15 16
<b>[26] Schedule 6, Part 20</b>	17
Insert at the end of clause 1 (1):	18
<i>Workers Compensation Amendment Act 2008</i>	19