

[Act 2000 No 87]



New South Wales

# Workers Compensation Legislation Amendment Bill 2000

## 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***), the *Workplace Injury Management and Workers Compensation Act 1998* (***the 1998 Act***) and the *Workers' Compensation (Dust Diseases) Act 1942* as follows:

- (a) to combine the Workers Compensation Advisory Council and the Occupational Health and Safety Council in a new Workers Compensation and Workplace Occupational Health and Safety Council with the function of providing advice to the Minister on occupational health and safety, workers compensation and injury management (see Schedule 1),
- (b) to provide for injury management pilot schemes and the introduction of market incentives for employers to improve occupational health and safety and injury management performance (see Schedule 2),

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

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- (c) to allow subsequent claims for compensation (after the initial claim is made to the employer) to be made directly to the workers compensation insurer (see Schedule 3),
- (d) to provide that the commencement of proceedings in the Compensation Court to recover permanent loss compensation constitutes an election to claim that compensation and prevents a claim for common law damages against the employer in respect of the injury concerned (see Schedule 4),
- (e) to provide that damages awards for an action founded in breach of contract can be reduced for contributory negligence on the part of the injured worker (as is the case with actions founded in tort) (see Schedule 5),
- (f) to provide for the regulations to make it an offence for an insurer to fail to give the required notice of a dispute as to liability and to require additional matters to be included in the notice (see Schedule 6),
- (g) to provide for the regulations or the rules of the Compensation Court to limit the number of medical reports that are obtained for the purposes of disputed workers compensation claims (see Schedule 7),
- (h) to require the parties to a dispute about liability for compensation to exchange information about and provide copies of the documentary evidence on which they propose to rely for the purposes of conciliation of the dispute (see Schedule 8),
- (i) to require multiple managed fund insurers involved in the same proceedings in relation to a claim for compensation to be represented by a single managed fund insurer (see Schedule 9),
- (j) to provide for the directors of a corporation to be personally liable for amounts authorised to be recovered from the corporation in respect of a failure to effect workers compensation insurance or evasion of premium, and to make other amendments to improve the operation of recovery provisions (see Schedule 10),
- (k) to enable the Authority and insurers to recover certain compliance monitoring costs in cases involving understatement of wages (see Schedule 11),
- (l) to require the payment of interest and late payment fees on premium debts from the date of issue of the policy where wages have been underestimated by employers and to make related amendments (see Schedule 12),
- (m) to introduce requirement of the issue of certificates of currency to enhance the self-enforcing nature of the workers compensation insurance scheme (see Schedule 13),
- (n) to create a new offence of fraud against the workers compensation scheme and to modify existing fraud offences (see Schedule 14),

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- (o) to expand the powers of authorised officers (for consistency with the *Occupational Health and Safety Act 2000*) (see Schedule 15),
- (p) to increase penalties (see Schedule 16),
- (q) to add to the range of penalties available for a breach by an insurer of a provision of the 1987 Act or 1998 Act, the regulations, its licence or an insurer agreement (see Schedule 17),
- (r) to increase the effectiveness of provisions prohibiting employers from deducting their workers compensation costs from workers' wages (see Schedule 18),
- (s) to remove the Crown's exemption from prosecution for a breach of workers compensation legislation (see Schedule 19),
- (t) to provide for the licensing of additional specialised insurers and to provide for contributions to the deficit by employers exiting the managed fund scheme (see Schedule 20),
- (u) to clarify the role of the Authority on an appeal by an employer against an aspect of an insurer's premium assessment (by providing that the Authority is to review the particular aspect, rather than make a complete redetermination of the premium) (see Schedule 21),
- (v) to provide that an insurer is liable to pay an employer interest on any overpaid premium when the employer successfully challenges a premium determination by the insurer (see Schedule 21),
- (w) to make miscellaneous amendments (see Schedules 22 and 23).

## 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 Schedules to the proposed Act containing the amendments outlined above.

**Clause 4** makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

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## **Schedules**

**Schedules 1–23** make the amendments outlined above. The amendments are explained in detail in explanatory notes set out in the Schedules.