

[Act 1997 No 134]



New South Wales

WorkCover Legislation Amendment Bill 1997

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* and the *Sporting Injuries Insurance Act 1978* as follows:

Amendments to the Workers Compensation Act 1987

- (a) Penalties for false workers compensation claims are increased and provisions for the recovery of compensation paid on false claims are strengthened.
- (b) A provision that allows maximum fee levels to be set for lawyers is amended to extend it to fees payable to agents.
- (c) Various amendments are made to increase the effectiveness of conciliation provisions.

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

- (d) Transitional provisions in the regulations providing that a 26 week period of entitlement to a special benefit rate for unemployed injured coal miners can (similarly to other workers' benefits) apply over broken periods, are transferred to the Act.
- (e) Other miscellaneous and minor amendments are made.

Amendments to the Sporting Injuries Insurance Act 1978

- (a) The Bill provides for the appointment of an additional part-time member of the Sporting Injuries Committee to represent the interests of disabled sportspersons.
- (b) The level of benefits payable for sporting injuries under the Act is increased by 14%.
- (c) The Act's terminology is updated by changing "registered player" to "registered participant" and "enrolled player" to "enrolled student participant".
- (d) Consequential transitional provisions are enacted.
- (e) Amendments to update obsolete references are made.

Outline of provisions

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed.

Clause 3 gives effect to the Schedule of amendments to the *Workers Compensation Act 1987*.

Clause 4 gives effect to the Schedule of amendments to the *Sporting Injuries Insurance Act 1978*.

Schedule 1 Amendment of Workers Compensation Act 1987

Schedule 1 [1] amends the definition of *Principal Conciliator* so that the Principal Conciliator will be the person holding office as such under Part 2 of the *Public Sector Management Act 1988*.

Schedule 1 [2] makes it clear that the obligation of a worker who is receiving weekly payments of compensation to notify certain changes of circumstances involving the worker's level of earnings arises no matter which of the changes occurs.

Schedule 1 [3] increases from 20 penalty units (currently \$2,200) to 40 penalty units (currently \$4,400) the existing maximum fine for a failure by a worker who is receiving weekly payments of compensation to notify a commencement of employment or a business or a change in employment that affects earnings.

Schedule 1 [4] expands an existing provision that allows a court to order the repayment of overpayments of compensation resulting from a worker's return to employment or a change in employment that affects the worker's earnings. As amended, the provision will permit a court to make such a compensation refund order when it convicts the person of an offence for failing to notify a commencement of employment, or a business or a change in employment that affects earnings, that resulted in the overpayment.

Schedule 1 [5] is consequential on **Schedule 1 [1]** and provides that the person holding office as Principal Conciliator is taken to be a conciliation officer.

Schedule 1 [6] amends the provision requiring a claim for weekly payments of compensation to include a medical certificate with an opinion as to whether employment is a substantial contributing factor to the injury. The amendment makes it clear that the requirement does not apply to claims under sections 10 (Journey claims), 11 (Recess claims) and 12 (Claims by trade union representatives) since those sections deal with situations where the worker is not engaged in actual employment duties.

Schedule 1 [7] increases the existing maximum penalty of 50 penalty units (currently \$5,500) and imprisonment for 12 months for the offence of making a false or misleading statement in a notice, claim for compensation or medical certificate. The maximum penalty will be increased to 100 penalty units (currently \$11,000) and 2 years imprisonment.

Schedule 1 [8] inserts a new provision that will permit a court to make a compensation refund order when it convicts a person of an offence under the Act for making a false or misleading statement that resulted in an overpayment.

Schedule 1 [9] inserts a new provision to enable regulations to be made to require an insurer to provide a copy of any report obtained by the insurer in relation to a claim by a worker, such as an investigator's report or rehabilitation provider's report, to the worker or another person (such as the worker's legal representative).

Schedule 1 [10] amends the provision that requires an insurer to give notice to a claimant when the insurer disputes liability on the claim. The amendment will make it clear that the requirement applies when the insurer disputes liability in respect of any aspect of the claim (and not necessarily the whole claim).

Schedule 1 [11] and [12] make amendments to authorise the making of regulations to specify cases and circumstances in which a conciliation officer to whom a party to a dispute provides information or documents is required to provide the information or documents concerned to another party to the dispute. A new provision specifically authorises conciliation officers to provide any party to a dispute with information and documents provided to the conciliation officer by any other party to the dispute and also provides for the regulations to create exceptions to this. The provision extends to all information and documents provided by a party, whether pursuant to a requirement under the Act or otherwise. A consequential amendment is made to an existing provision that contains a power to make regulations specifying the circumstances in which a conciliation officer may or may not disclose to a party information and documents provided to the conciliation officer pursuant to a requirement imposed by the conciliation officer.

Schedule 1 [13] makes an amendment to provide that conciliation officers are competent but not compellable in legal proceedings to give evidence or produce documents in respect of matters that relate to the exercise of their functions.

Schedule 1 [14] requires a person against whom a claim for weekly payments of compensation is made and who has or anticipates having a reasonable excuse that justifies a delay in the commencement of those payments to notify the claimant in writing as soon as practicable.

Schedule 1 [15] inserts a new provision to deal with the situation where a dispute about a new claim is referred to the Senior Conciliation Officer (rather than to the Principal Conciliator, as required). Various provisions impose a waiting period after a dispute has been referred for conciliation before court proceedings can be commenced on the dispute. The amendment will provide that such a waiting period does not begin to run until the dispute has been correctly referred to the Principal Conciliator. The amendment will allow for the possibility that disputes about the claims concerned (new claims) are required to be referred to the Principal Conciliator but are nevertheless valid if referred to the Senior Conciliation Officer (who is the appropriate referral officer for existing claims).

Schedule 1 [16] amends the provision that prevents a claimant for weekly payments of compensation from lodging an application for conciliation until a period allowed for insurers to assess and, if applicable, dispute the claim has elapsed. The period allowed for insurers is 21 days after the claim is made, but that may be extended to a maximum of 42 days subject to there being a reasonable excuse (such as the necessity for further medical examination) for the delay in commencement of payments. The amendment makes it clear that conciliation applications are prevented not only during the initial 21 day period but also during such an extension of that period.

Schedule 1 [17]–[21] amend a provision that authorises the making of regulations to fix maximum costs recoverable by legal practitioners in workers compensation matters. The amendments extend the provision to costs recoverable by agents in workers compensation matters.

Schedule 1 [22] amends a provision that enables an employer to require an injured worker to undergo a medical examination by a doctor provided by the employer. The amendment will allow the regulations to require the employer or the employer’s insurer to provide a copy of any resulting medical report or opinion to the worker or another person (such as the worker’s legal representative).

Schedule 1 [23] clarifies a provision dealing with misleading conduct by workers compensation insurers and insurance intermediaries (such as brokers and insurance agents) by adoption of the term “insurance intermediary” rather than “broker”.

Schedule 1 [24] and [25] enact consequential savings and transitional provisions.

Schedule 1 [26]–[28] amend the special transitional provisions that apply to coal miners to clarify the operation of amendments made in 1996 in relation to top-up of partial incapacity benefits. Under those provisions, prior to their amendment in 1996, a coal miner who was partially incapacitated but not provided with suitable duties was entitled to benefits at the total incapacity level (deemed total incapacity) with no limit as to how long the entitlement continued (until retirement). In the same circumstances, other workers are entitled to a maximum 104 weeks deemed total incapacity compensation. The rates of total incapacity benefit and deemed total incapacity benefit for coal miners remained however at the lower scale of indexed rate applicable under the former Act. In practice, coal miners’ accident pay entitlements topped-up these rates to the higher levels applicable to other workers, but only for the first 78 weeks of incapacity for work. The purpose of the 1996 amendments was to apply to coal miners the higher rates of total incapacity benefit and

deemed total incapacity benefits applicable to other workers, but only during the period after the first 78 weeks of incapacity (ie the time at which accident pay top-up cuts out) and before the first 104 weeks of incapacity (the maximum period of deemed total incapacity entitlement for other workers). The Bill amends those provisions to make it clear that the 78 week point is the first 78 weeks of incapacity, and not the first 78 weeks after the injury (because incapacity can start later than the injury). The amendment is backdated to the commencement of the 1996 amendments.

Schedule 2 Amendment of Sporting Injuries Insurance Act 1978

Schedule 2 [1] makes amendments to update obsolete references.

Schedule 2 [9] and **[15]** enact consequential transitional provisions.

Schedule 2 [2]-[8] and **[10]** increase the level of benefits payable for sporting injuries under the Act by 14%.

Schedule 2 [11]-[14] provide for the appointment of an additional part-time of the Sporting Injuries Committee to represent the interests of disabled sportspersons.

Schedule 2 [16] and **[17]** update the Act's terminology by changing "registered player" to "registered participant" and "enrolled player" to "enrolled student participant".