



New South Wales

Workers Compensation Legislation Amendment (Benefits) 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 increase the lump sum death benefit to \$425,000 (with the increased benefit to apply to deaths with a date of injury after the commencement of the 1987 Act where the date of death is on or after 24 October 2007),
- (b) to provide that the lump sum death benefit must be paid to a deceased worker's estate if the worker dies leaving no financial dependants,
- (c) to remove discretion to reduce the amount payable as lump sum death benefit to a deceased worker's dependants on the basis of partial financial dependency (without preventing apportionment of the death benefit amount among multiple dependants),
- (d) to enable the introduction of an alternative method of calculating workers compensation insurance premiums as an optional alternative method to be available to certain large employers with the approval of the Workers Compensation Nominal Insurer,

- (e) to enable the Nominal Insurer to require employers whose workers compensation premiums are calculated by means of an optional alternative method to lodge a security deposit or guarantee to provide security for the payment of those premiums.

The Bill also amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to extend the amendments mentioned in paragraphs (a)–(c) above (relating to lump sum death benefits) to fire fighters and emergency and rescue workers covered by that Act.

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 to the proposed Act.

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 *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* set out in Schedule 2.

Clause 5 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.

Lump sum death benefits

The 1987 Act provides for the payment of lump sum compensation if an injury results in the death of a worker and the worker has dependants, and provides for the apportionment of that compensation among the deceased worker's dependants.

Schedule 1 [2] increases the lump sum death benefit to \$425,000 and provides for the payment of the lump sum to the dependants of the deceased worker or to the estate of the deceased worker if the worker leaves no dependants. **Schedule 1 [1], [3] and [7]** make consequential amendments.

Schedule 1 [4] makes it clear that the apportionment of the lump sum death benefit among dependants is not to result in any reduction in the total amount payable, so that if there is only one dependant that dependant receives the full amount of compensation and if there are 2 or more dependants the full amount of compensation is apportioned between them.

Schedule 1 [5] and [6] make consequential amendments to provisions for the indexation of the lump sum death benefit.

Schedule 2 [1]–[4] extend the lump sum death benefit amendments to fire fighters and other emergency and rescue workers covered by the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

Optional alternative premium calculation method

The 1987 Act provides for the premium to be paid for a workers compensation insurance policy to be calculated in the manner fixed by an insurance premiums order.

Schedule 1 [8] (proposed section 168A) provides that an insurance premiums order may fix (as an *optional alternative method*) an alternative method of calculating premiums for workers compensation insurance policies. An optional alternative method will only apply to large employers who satisfy eligibility criteria established by the insurance premiums order and who are approved by the Nominal Insurer for the alternative method.

Schedule 1 [9] (proposed section 172A) provides for the Nominal Insurer to require an employer to whom an optional alternative method of premium calculation applies to provide a security deposit or guarantee to be available for discharging the employer's liability to pay premiums calculated under the optional alternative method.

Savings and transitional

Schedules 1 [11] and 2 [5] provide savings and transitional regulation making powers.

Schedules 1 [10] and 2 [6] enact consequential savings and transitional arrangements. Under those arrangements, the death benefit amendments apply to deaths occurring on or after 24 October 2007 but not to a death resulting from an injury received before the commencement of the 1987 Act.



New South Wales

Workers Compensation Legislation Amendment (Benefits) Bill 2008

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83	2
5 Repeal of Act	2
Schedule 1 Amendment of Workers Compensation Act 1987	3
Schedule 2 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987	8



New South Wales

Workers Compensation Legislation Amendment (Benefits) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Workers Compensation Act 1987* to make further provision for benefits payable under the Act and workers compensation insurance.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Workers Compensation Legislation Amendment (Benefits) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Workers Compensation Act 1987 No 70	7
The <i>Workers Compensation Act 1987</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83	10 11
The <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> is amended as set out in Schedule 2.	12 13
5 Repeal of Act	14
(1) This Act is repealed on the day following the day on which the Act commences.	15 16
(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.	17 18

Schedule 1	Amendment of Workers Compensation Act 1987	1
		2
	(Section 3)	3
[1]	Section 25 Death of worker leaving dependants	4
	Omit “and the worker leaves any dependants wholly dependent for support on the worker,” from section 25 (1).	5 6
[2]	Section 25 (1) (a)	7
	Omit the paragraph. Insert instead:	8
	(a) the amount of \$425,000 (the <i>lump sum death benefit</i>), which is to be apportioned among any dependants who are wholly or partly dependent for support on the worker or (if there are no such dependants) paid to the worker’s legal personal representative, and	9 10 11 12 13
[3]	Section 26	14
	Omit sections 26–27A. Insert instead:	15
	26 Funeral expenses	16
	If compensation is payable under this Division for a death resulting from an injury, the employer must pay additional compensation equal to reasonable funeral expenses not exceeding \$9,000 or such other amount as may be prescribed by the regulations.	17 18 19 20 21
[4]	Section 29 Apportionment of payments between dependants	22
	Insert after section 29 (1):	23
	(1A) The lump sum death benefit payable under this Division is not to be apportioned if a deceased worker leaves only one dependant (whether wholly or partly dependent on the worker for support) and the whole of the lump sum death benefit is to be paid to that one dependant.	24 25 26 27 28
	(1B) In apportioning the lump sum death benefit payable under this Division between 2 or more dependants, the whole lump sum death benefit is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full lump sum death benefit).	29 30 31 32 33

[5] Section 79 Definitions	1
Omit the definition of <i>base index number</i> . Insert instead:	2
<i>base index number</i> means:	3
(a) in respect of an adjustable amount that is the amount specified in section 25 (1) (a)—the number 212.1, and	4
(b) in respect of any adjustable amount that is an amount specified in section 66 or 67—the number declared by the regulations to be the base index number for that adjustable amount, and	6
(c) in respect of any other adjustable amount—the number 130.8.	9
[6] Section 81 Rounding off	12
Omit “section 25” from section 81 (1). Insert instead “section 25 (1) (a)”.	13
[7] Section 85 Payments to Public Trustee for benefit of beneficiary	14
Insert “a worker’s legal personal representative or” after “unless paid to” in section 85 (1) (a).	15
[8] Section 168A	17
Insert after section 168:	18
168A Optional alternative method of calculating premium for large employers	19
(1) An insurance premiums order may fix (as an <i>optional alternative method</i>) an alternative method for calculating the premium payable for a policy of insurance by an employer who is classified under the order as a large employer (or a person who proposes to become such an employer).	20
(2) An optional alternative method for calculating premium applies to an employer only if:	21
(a) the employer satisfies any criteria established by the insurance premiums order for eligibility for the optional alternative method, and	22
(b) the Nominal Insurer has, on the application of the employer, approved of the optional alternative method applying to the employer for the time being.	23
(3) The Nominal Insurer may revoke an approval under this section at any time.	24
	25
	26
	27
	28
	29
	30
	31
	32
	33
	34
	35

-
- (4) If an optional alternative method applies to an employer, that method applies for the purpose of calculating the relevant premium payable by the employer instead of any method that would otherwise apply to the employer under the insurance premiums order. 1
2
3
4
5

[9] Section 172A 6

Insert after section 172: 7

172A Security deposit or guarantee for payment of premium—optional alternative premium calculation method 8
9

- (1) The Nominal Insurer may require an employer who is or was insured under a policy of insurance the premium for which was determined by an optional alternative method (as referred to in section 168A) to have on deposit with the Nominal Insurer the employer's required deposit in respect of the policy, and the employer must: 10
11
12
13
14
15

(a) deposit with the Nominal Insurer such amount as the Nominal Insurer determines and notifies the employer to be the employer's required deposit in respect of the policy of insurance concerned, and 16
17
18
19

(b) deposit with the Nominal Insurer, at such time or times as the Nominal Insurer may direct by notice to the employer, such additional amount or amounts as the Nominal Insurer determines to be necessary to ensure that the amount the employer has on deposit under this section is the employer's required deposit for the time being. 20
21
22
23
24
25

Maximum penalty: 100 penalty units. 26

- (2) The Nominal Insurer is to hold money on deposit under this section on trust for the payment and satisfaction of the employer's liability to pay any premium (including any adjustment of premium) payable in respect of the policy of insurance to which the money held on deposit relates. 27
28
29
30
31

- (3) An amount of money deposited with the Nominal Insurer under this section is not liable to be attached or levied on or made subject to any debts of or claims against the employer making the deposit, except as provided by subsection (2). 32
33
34
35

- (4) The Nominal Insurer may at any time refund to an employer who has money on deposit under this section any amount by which the employer's deposit exceeds the employer's required deposit for the time being. 36
37
38
39

Workers Compensation Legislation Amendment (Benefits) Bill 2008

Schedule 1 Amendment of Workers Compensation Act 1987

- (5) An employer must comply with any written direction of the Nominal Insurer to provide the Nominal Insurer with specified information (including actuarial information) for the purpose of enabling the Nominal Insurer to determine the employer's required deposit in respect of a policy of insurance from time to time. 1
2
3
4
5
6
Maximum penalty: 50 penalty units. 7
- (6) Sections 214–215A apply to and in respect of an amount of money deposited with the Nominal Insurer under this section as if: 8
9
10
- (a) the amount deposited were deposited pursuant to an obligation imposed under Division 5 (Self-insurers) of Part 7, and 11
12
13
- (b) the employer were a self-insurer while the employer holds a policy of insurance in respect of which the amount is held on deposit, and 14
15
16
- (c) a reference in those provisions to the Authority were a reference to the Nominal Insurer. 17
18
- (7) An employer who has deposited an amount of money with the Nominal Insurer under this section is entitled to a refund of the amount so deposited and standing to the employer's credit with the Nominal Insurer: 19
20
21
22
- (a) on the expiration of 3 months after service on the Nominal Insurer of a written request for the refund, and 23
24
- (b) on satisfying the Nominal Insurer that the employer's liability referred to in subsection (2) has been discharged or adequately provided for. 25
26
27
- (8) In this section: 28
29
employer includes a former employer. 29
required deposit in respect of a policy of insurance means the amount fixed by or determined in accordance with the relevant insurance premiums order as the required deposit for the policy. 30
31
32

[10] Schedule 6 Savings, transitional and other provisions	1
Insert as Part 19F:	2
Part 19F Provisions consequent on enactment of Workers Compensation Legislation Amendment (Benefits) Act 2008	3 4 5
1 Definition	6
In this Part:	7
2008 amending Act means the <i>Workers Compensation Legislation Amendment (Benefits) Act 2008</i> .	8 9
2 Changes to death benefit	10
(1) The amendments made by the 2008 amending Act with respect to compensation payable under Division 1 (Compensation payable on death) of Part 3 (a death benefit) extend to deaths that occur on or after 24 October 2007 (whenever the injury occurred), but not to a death resulting from an injury received before 30 June 1987.	11 12 13 14 15 16
(2) In the case of a death benefit that is payable to a worker's legal personal representative in respect of death occurring before the commencement of this clause, the regulations may make provision for payment of the death benefit to any beneficiary or creditor of the deceased worker's estate (instead of to the legal personal representative) where administration of the deceased's estate is finalised before or within 6 months after the commencement of this clause.	17 18 19 20 21 22 23 24
(3) Regulations under subclause (2) may extend to compensation payable under section 10 (a) or 26 (a) of the <i>Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987</i> .	25 26 27 28
[11] Schedule 6, Part 20	29
Insert at the end of clause 1 (1):	30
<i>Workers Compensation Legislation Amendment (Benefits) Act 2008</i>	31 32

Schedule 2	Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987	1
		2
		3
	(Section 4)	4
[1] Section 11 Provisions relating to compensation for injury or death		5
Omit section 11 (2A).		6
[2] Section 11 (4)–(4B)		7
Omit section 11 (4). Insert instead:		8
(4) The compensation payable under subsection (2) to each dependant of a fire fighter may be apportioned by the Authority.		9
		10
(4A) The compensation payable under subsection (2) is not to be apportioned if a fire fighter leaves only one dependant (whether wholly or partly dependent on the fire fighter for support) and the whole of the compensation payable under subsection (2) is to be paid to that one dependant.		11
		12
		13
		14
		15
(4B) In apportioning the compensation payable under subsection (2) between 2 or more dependants, the whole of the amount payable is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full amount of the compensation payable under subsection (2)).		16
		17
		18
		19
		20
[3] Section 27 Provisions relating to compensation for injury or death		21
Omit section 27 (2A).		22
[4] Section 27 (4)–(4B)		23
Omit section 27 (4). Insert instead:		24
(4) The compensation payable under subsection (2) to each dependant of a worker may be apportioned by the Authority.		25
		26
(4A) The compensation payable under subsection (2) is not to be apportioned if a worker leaves only one dependant (whether wholly or partly dependent on the worker for support) and the whole of the compensation payable under subsection (2) is to be paid to that one dependant.		27
		28
		29
		30
		31
(4B) In apportioning the compensation payable under subsection (2) between 2 or more dependants, the whole of the amount payable is to be apportioned among those dependants (so that the sum of the apportioned amounts equals the full amount of the compensation payable under subsection (2)).		32
		33
		34
		35
		36

[5] Schedule 1 Savings and transitional provisions	1
Insert at the end of clause 1A (1):	2
<i>Workers Compensation Legislation Amendment (Benefits) Act 2008</i> to the extent that it amends this Act	3
	4
[6] Schedule 1, Part 5	5
Insert after Part 4:	6
Part 5 Workers Compensation Legislation Amendment (Benefits) Act 2008	7
	8
5 Definition	9
In this Part:	10
<i>2008 amending Act</i> means the <i>Workers Compensation Legislation Amendment (Benefits) Act 2008</i> .	11
	12
6 Changes to death benefit	13
The amendments made by the 2008 amending Act with respect to compensation payable under section 11 (2) or 27 (2) extend to deaths that occur on or after 24 October 2007 (whenever the injury occurred), but not to a death resulting from an injury received before 30 June 1987.	14
	15
	16
	17
	18