

[Act 2001 No 61]



New South Wales

Workers Compensation Legislation Amendment Bill 2001 (No 2)

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 *Workplace Injury Management and Workers Compensation Act 1998* (*the Workers Compensation Acts*) and certain other Acts to provide for the following:

- (a) provisional acceptance of liability for workers compensation within 7 days of notification of injury (thereby requiring limited payments of weekly benefits for up to 12 weeks to commence prior to liability being determined),
- (b) removal of the requirement for the Compensation Court to determine lump sum commutation of workers compensation benefits, subject to additional requirements for independent advice and scrutiny and registration of commutation agreements,

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

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- (c) provision of enhanced assistance and information to injured workers and employers in connection with their rights and obligations under the legislation,
- (d) establishment by the WorkCover Authority (**WorkCover**) of advisory services to provide claims assistance to workers, employers and insurers and funding by WorkCover of the provision of those services by employee or employer associations for 3 years,
- (e) expanded sanctions for insurers that fail to make decisions on claims within the prescribed time frames, including requirements to pay administrative fees where such matters are determined by the new Workers Compensation Commission,
- (f) establishment of a Workers Compensation Commission (**the Commission**) comprising a President, 2 Deputy Presidents, a Registrar and Arbitrators and providing dispute resolution for disputes about workers compensation, voluntary assessment of common law claims and oversight of commutations,
- (g) provisions for expedited assessment by the Registrar of disputes referred to the Commission (including provision for directions for interim payment of weekly benefits for up to 12 weeks and reasonable and necessary medical treatment, and recommendations for action to remedy a contravention of Chapter 3 (Injury management) of the 1998 Act),
- (h) determination of disputed medical issues by approved medical specialists, with their determinations to be conclusive as to some matters (such as degree of permanent impairment) and prima facie evidence as to other matters,
- (i) determination of disputes about workers compensation by the Commission constituted by an Arbitrator with the decisions of the Commission being final and binding on the parties, subject to a right of appeal to the Commission constituted by a Presidential member and to the Court of Appeal (on a question of law) from a decision of the Commission constituted by a Presidential member,
- (j) a claim against an employer for common law damages in respect of an injury for which workers compensation is payable will be able to be assessed by the Commission (at the option of the worker) before the matter proceeds to court with determinations to be binding on insurers in some circumstances,
- (k) the Commission will have the same jurisdiction that the Compensation Court presently has under the Workers Compensation Acts (including jurisdiction to determine other miscellaneous matters arising under workers compensation legislation, such as apportionment disputes),

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- (l) existing arrangements for the conciliation of disputes by conciliation officers and the determination of disputes by the Compensation Court will continue in respect of existing claims (subject to the transfer of existing claims to the new claims provisions),
- (m) claimants, employers and insurers will be entitled to legal representation before the Commission but an insurer will not be entitled to representation if the claimant is unrepresented,
- (n) existing cost sanctions will be expanded to apply to legal representatives who contribute to delay,
- (o) the regulations will be able to provide for the assessment or taxation of costs,
- (p) entitlement to lump sum compensation for non-economic loss will be based on the degree of permanent impairment suffered (with the degree of permanent impairment to be assessed in accordance with guidelines) rather than the existing Table of Disabilities,
- (q) consequential amendments are made to the threshold for entitlement to lump sum pain and suffering compensation,
- (r) transitional provisions with existing claims to remain subject to current provisions and power for the regulations to progressively transfer claims to the new claims procedures,
- (s) fine tuning of provisions for the notification and making of claims,
- (t) miscellaneous amendments (relating to cessation of weekly payments on retirement, redetermination of premiums and payment of interest on underpaid premiums, provision of information by employers as to wages paid, conferring power on WorkCover Authority officers to obtain documents, information and evidence, and requiring prompt payment of compensation when liability is admitted),
- (u) consequential amendments.

The amendments do not apply to coal miners (with minor exceptions concerning the accreditation of injury management consultants).

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.

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Clause 3 is a formal provision giving effect to the amendments to the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998* and other Acts set out in Schedules 1–6.

Schedule 1 makes the amendments referred to in paragraph (b) of the Overview (concerning commutation to a lump sum of workers compensation liabilities) together with consequential amendments.

Schedule 2 makes the amendments referred to in paragraphs (c) and (d) of the Overview (concerning the provision of assistance and information and the establishment and funding of claims assistance advisory services). The Schedule also provides for the approval of injury management consultants by WorkCover and for WorkCover Guidelines to provide for their functions. Approved injury management consultants will be competent but not compellable to give evidence in proceedings.

Schedule 3 makes the amendments to provisions for lump sum statutory compensation for permanent injuries referred to in paragraphs (p) and (q) of the Overview. Currently lump sum compensation is assessed pursuant to a Table of Disabilities based on a proportion of the maximum amount payable that is determined by reference to the percentage allocated to the loss in the Table. The amendments will provide for the payment of ***permanent impairment compensation*** based on the degree of permanent impairment that results from the injury (with the degree of permanent impairment assessed in accordance with WorkCover Guidelines). Consequential amendments are made to provisions for pain and suffering compensation and various other provisions to reflect the change to the way in which permanent impairment compensation is to be calculated.

No compensation will be payable for secondary psychological injuries that result in permanent impairment.

The Schedule also makes other amendments that are consequential on the amendments made by Schedule 4 concerning new claims handling and dispute resolution procedures.

Schedule 4 makes the other amendments referred to in the Overview (except miscellaneous and consequential amendments).

Schedule 4.1 [1] amends the provision that imposes a 3 year limitation period for the commencement of proceedings for common law damages for a work injury so that time does not run while and for 2 months after a claim for damages is being assessed by the Commission.

Schedule 4.1 [2] exempts coal miners from the amendments made by the Bill (except for amendments to do with the accreditation of injury management consultants).

Schedule 4.1 [3] inserts transitional provisions for the Bill, including provisions for the transfer of existing claims (which will continue to be dealt with in accordance with existing claims procedures and compensation entitlement procedures) to new claims procedures and entitlements. Once an existing claim is transferred, any disputes will be resolved in the new Workers Compensation Commission.

Schedule 4.2 [1]–[15] make consequential amendments.

Schedule 4.2 [16] and **[17]** insert new Chapter 7 and Schedule 5 into the 1998 Act, providing for new procedures for the making and determination of claims for statutory compensation and common law damages and disputes involving those claims.

Significant features of the new arrangements are as follows:

- (a) Division 1 of Part 2 simplifies procedures for the giving of notice of injury.
- (b) Division 2 of Part 2 simplifies procedures for the making of a claim for statutory compensation (with the introduction of significant flexibility by reference to WorkCover Guidelines) and extends some of these procedures to claims for (common law) work injury damages.
- (c) Division 1 of Part 3 imposes a duty on insurers to commence weekly payments of compensation (pursuant to provisional acceptance of liability) within 7 days after initial notification of injury.
- (d) Division 2 of Part 3 deals with claims for weekly payments and requires claims to be determined within 21 days. A claim is determined by accepting liability and commencing weekly payments or by disputing liability. Liability can be accepted provisionally for up to 12 weeks.
- (e) Division 3 of Part 3 deals with claims for medical expenses and requires a claim to be determined within 21 days by either accepting or disputing liability. Liability can be accepted provisionally for an amount of up to \$1,000.
- (f) Division 4 of Part 3 deals with claims for lump sum statutory compensation or work injury damages. A claim must be determined by accepting liability and making a reasonable offer of settlement or by disputing liability. A claim must be determined within 2 months after the claimant provides all relevant information or (if the injury is not permanent within that time) within 1 month after it has become permanent.

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- (g) Division 5 of Part 3 deals with the enforcement of claims determination provisions. The Division creates offences for failing to determine a claim within the required time or for referring a non-genuine dispute for the purposes of delay. Insurers can be required to pay an administration fee if they fail to determine a claim within the required time or unreasonably dispute a claim, and the claim is referred for dispute determination.
- (h) Part 4 provides for the determination of disputes about claims for statutory compensation by the new Workers Compensation Commission (rather than the Compensation Court, as at present). The Part imposes restrictions on when a dispute can be referred for determination.
- (i) Part 5 provides for the Registrar (or the Commission constituted by an Arbitrator) to be able to give an interim payment direction to pay weekly compensation or medical expenses compensation, pending the determination of any dispute about the compensation. The Part also provides for the making of recommendations by the Registrar in respect of disputes that concern a failure to comply with an obligation under Chapter 3 (Injury management) of the 1998 Act and for those recommendations to become binding in some cases.
- (j) Part 6 provides for the assessment by the Commission of claims for (common law) work injury damages. The assessment of a claim is not a determination of the claim (except to the extent that liability is accepted by the insurer and the insurer accepts the amount of damages assessed). Claims assessment is at the option of the worker.
- (k) Part 7 deals with the appointment of approved medical specialists and the assessment by them of medical disputes. The assessment of degree of permanent impairment is required to be in accordance with WorkCover Guidelines. An assessment of a medical dispute by an approved medical specialist will only be conclusive as to degree of permanent impairment, proportion of impairment due to previous injury, extent of loss of hearing and whether an impairment is permanent.
- (l) Part 8 deals with legal costs in workers compensation matters. The Part simplifies and expands existing provisions and extends costs fixing powers to costs in court proceedings on work injury damages claims. The regulations can provide for the assessment and taxation of costs.
- (m) Part 9 deals with proceedings before the Commission. Decisions and assessments of the Commission are final, subject to the rights of appeal referred to in the Overview.
- (n) Part 10 deals with administrative matters, including the establishment of the Commission and the issuing of WorkCover Guidelines.

Schedule 4.3 makes consequential amendments to the *Compensation Court Act 1984*.

Schedule 4.4 makes consequential amendments to the *Defamation Act 1974*.

Schedule 5 makes the following miscellaneous amendments to the 1987 and 1998 Acts:

- (a) The provision of the 1987 Act that provides a 12 month limitation on weekly payments for an injury that occurs after the worker's retirement age is amended so that the 12 month period will begin running from the first occasion of incapacity (rather than from the date of injury as at present).
- (b) Provision is inserted in the 1987 Act for the making of regulations to provide for the reassessment of a workers compensation insurance premium when there is a change in the level of wages on which the premium is determined, and to provide for the payment of interest on any resulting underpayment or overpayment.
- (c) An existing provision in the 1987 Act that requires employers to provide certain information as to wages paid to workers is expanded to cover a wider class of records and to enable persons (whether or not they are employers) to be required to provide information on amounts paid under contracts for the performance of work.
- (d) A new provision is inserted in the 1998 Act requiring an insurer who admits liability for compensation to pay the compensation promptly. The Authority will be able to direct payment of compensation that is not paid promptly following an admission of liability.
- (e) A new provision is inserted in the 1998 Act to enable authorised officers of the WorkCover Authority to require persons to give information, produce documents or give evidence in respect of a possible contravention of the 1987 or 1998 Act.

Schedule 6 makes consequential amendments to the 1987 and 1998 Acts and the *Workers Compensation Amendment Act 2000*.