

# Workers Compensation Legislation Amendment Act 2000 No 87

[2000-87]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 July 2005 to 30 October 2018 (accessed 25 November 2024 at 14:26)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Repeal**

This Act was repealed by Sch 12 to the [Fair Trading Legislation Amendment \(Reform\) Act 2018 No 65](#) with effect from 31.10.2018.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Workers Compensation Legislation Amendment Act 2000 No 87



New South Wales

An Act to amend the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998* and certain other Acts to make further provision with respect to workers compensation benefits, claims, insurance, injury management, administration, conciliation and other matters; and for other purposes.

## 1 Name of Act

This Act is the *Workers Compensation Legislation Amendment Act 2000*.

## 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) A proclamation under this section may appoint a particular time on a day as the time for commencement on that day.

## 3 Amendments

Each Act specified in Schedules 1-23 is amended as set out in those Schedules.

## 4 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

## Schedules 1-8 (Repealed)

## Schedule 9 Amendments relating to liability involving multiple managed fund insurers

(Section 3)

## Workers Compensation Act 1987 No 70

### [1] Section 18 Special insurance provisions relating to occupational diseases

Omit section 18 (3). Insert instead:

(3) The provisions of this section are subject to section 22D.

**Explanatory note**

Item [1] amends section 18 as a consequence of the enactment of proposed section 22D by item [4].

**[2] Section 22A Further provisions concerning apportionment of liability under section 22**

Omit “The person” from section 22A (5).

Insert instead “Subject to section 22D, the person”.

**Explanatory note**

Item [2] amends section 22A (5) as a consequence of the enactment of proposed section 22D by item [4].

**[3] Section 22A (8)**

Omit the subsection.

**Explanatory note**

Item [3] omits section 22A (8) as a consequence of the enactment of proposed section 22D by item [4].

**[4] Section 22D**

Insert after section 22C:

**22D Provisions concerning liability involving multiple managed fund insurers**

(1) This section applies to an injury or series of injuries:

- (a) to which any one or more of sections 15, 16, 17 and 22 apply or are alleged to apply, and
- (b) assuming that compensation is payable in relation to that injury or series of injuries, more than one managed fund insurer is or may become liable to make or contribute to a payment of compensation in accordance with any one or more of those sections,

and so applies whether or not any other insurer is or may become liable to make or contribute to such a payment, and whether or not any employer is or may become liable as a self-insurer, in respect of that injury or series of injuries.

(2) Subject to the regulations, any compensation or contribution that would (but for this subsection) be payable in accordance with any one or more of sections 15, 16, 17 and 22 by managed fund insurers in relation to an injury or series of injuries is to be paid by the primary insurer:

- (a) with no contribution from any other managed fund insurer (or from any

- employer insured by a managed fund insurer) under section 15, 16 or 17, and
- (b) with no apportionment of liability between managed fund insurers (or between any employers to the extent to which they are insured by managed fund insurers) under section 22.
- (3) Subject to the regulations, in and for the purposes of any proceedings under this Act or the 1998 Act in relation to an injury or series of injuries, other than proceedings under Division 2 of Part 7:
- (a) the primary insurer is, alone among the managed fund insurers, a party to the proceedings, and
- (b) the primary insurer is subrogated to the rights of:
- (i) the other managed fund insurers who (but for paragraph (a)) would have been party to the proceedings, and
- (ii) any employers insured by those other managed fund insurers, in respect of that injury or series of injuries, and
- (c) in the case of an injury or series of injuries in respect of which:
- (i) an employer that is a self-insurer, or
- (ii) an insurer that is not a managed fund insurer,
- is or may become liable to make or contribute to a payment of compensation, the managed fund insurers are taken to be a single insurer.
- (4) The primary insurer has, by operation of this subsection:
- (a) all of the powers, authorities, duties and functions, and all of the protections and immunities, that, by or under this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, are conferred or imposed on an insurer, or
- (b) all of the powers, authorities, duties and functions, and all of the protections and immunities, that, by or under this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, are conferred or imposed on an employer, to the extent to which they may, under this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, attach to or be exercised or performed by an insurer,
- in relation to an injury or series of injuries.
- (5) Without limiting subsection (4):

- (a) the primary insurer may make any request or requirement of an employer or worker that an insurer is empowered to make under the provisions of this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, and
- (b) the employer or worker to whom such a request or requirement is made has the same obligations to comply with the request or requirement as if it had been made by an insurer under the provisions of this Act or the 1998 Act, the regulations under those Acts or a policy of insurance,

and the provisions of this Act or the 1998 Act, the regulations under those Acts or a policy of insurance, as the case may be, apply accordingly.

(6) If the primary insurer gives a written direction:

- (a) to a managed fund insurer, or
- (b) to an employer who is, or has at any relevant time, been insured by the primary insurer or any other managed fund insurer,

in relation to an injury or series of injuries, being a direction requiring the production of any document or the provision of any information in relation to the injury or series of injuries, the insurer or employer to whom the direction is given must comply with the direction, within such reasonable time as is specified in the direction, to the fullest extent to which it is practicable for the insurer or employer to do so.

Maximum penalty: 50 penalty units.

- (7) For the purposes of section 243 of the 1998 Act, the production of any document or the provision of any information to a managed fund insurer by an employer or another managed fund insurer, in connection with the operation of this section, is taken to have been made in connection with the administration or execution of this Act.
- (8) The regulations may provide for the modification of the other provisions of this Act or the 1998 Act with respect to any matter arising under this section.
- (9) For the purposes of this section, a managed fund insurer is liable to make or contribute to a payment of compensation if, under a policy of insurance, it is liable to indemnify an employer in relation to the making of, or contribution to, such a payment.
- (10) Subject to the regulations:
  - (a) anything done by or in relation to a managed fund insurer (other than the primary insurer) for the purposes of this Act or the 1998 Act on the basis that the insurer is the primary insurer is taken to have been done by or in relation

to the primary insurer, an

(b) anything done by or in relation to the primary insurer for the purposes of this Act or the 1998 Act on the basis that this section applies to an injury or series of injuries is, if it is subsequently determined that this section does not apply to that injury or series of injuries, taken to have been done by or in relation to the managed fund insurer by or in relation to whom it would (but for this section) have been permitted or required to be done.

(11) For the purpose of calculating the insurance premiums payable by employers insured by managed fund insurers, their claims histories are to be determined, subject to the regulations, on the basis of the following assumptions:

(a) that the contributions that (but for this section) would have become payable by them are payable, without the need for a determination or agreement as to the amount of any such contribution,

(b) that the liability that (but for this section) would have been apportioned between any employers or managed fund insurers under section 22 has been apportioned, without the need for a determination or agreement as to any such apportionment.

(12) In this section:

***managed fund insurer*** means an insurer to which Division 4 of Part 7 applies.

***primary insurer***, in relation to an injury or series of injuries, means:

(a) unless and until some other managed fund insurer is designated as the primary insurer under paragraph (b), the managed fund insurer under the most recent policy of insurance with respect to that injury or those injuries, or

(b) if in a particular case or class of cases the Authority designates some other managed fund insurer as the primary insurer for the purposes of this section (being a managed fund insurer under a policy of insurance with respect to that injury or any of those injuries), the managed fund insurer so designated.

***proceedings***, in relation to an injury or series of injuries, includes anything done pursuant to a claim made under this Act or the 1998 Act in relation to the injury or series of injuries, including (without limitation) any negotiation with respect to the claim.

#### **Explanatory note**

Item [4] inserts a new section 22D into the 1987 Act. The new section applies in situations in which there are multiple managed fund insurers for one or more injuries, and allows all of the insurers to be represented by one of them (the ***primary insurer***). This includes situations where the managed fund insurers cover either different employers or the same employer at different times. The new section then makes provision (in a similar way to

current section 22A (8)) for the payment of compensation in such situations, both where liability is disputed and where liability is undisputed.

Under this arrangement, the primary insurer's role will include the duty to properly represent the interests of relevant employers insured by the other managed fund insurers, as well as the interests of the employer actually insured by the primary insurer. Any compensation that is payable to the worker in those circumstances (and any related contributions) should be paid by, and any negotiations or defence of proceedings required by the claim should be conducted by, the primary insurer in the name of the relevant employer or employers.

The extended role given by the amendments to the primary insurer applies only in relation to periods of insurance covered by managed fund insurers, so that if, for example, an employer was at another time covered by a non-managed fund insurer or operating as a self-insurer, that insurer's or self-insurer's separate right of representation is not affected.

As with the current procedure, there is to be no actual apportionment between managed fund insurers (and the employers insured by them) but merely a notional apportionment for the purpose of calculating the claims histories of the employers concerned. However, apportionment (or contributions) involving other parties will still be the subject of agreement by the primary insurer or determination under normal provisions. Employers whose interests in respect of a claim are represented by the primary insurer will continue to be able to appeal under existing provisions against their insurer's premium assessment.

The primary insurer's role will apply even at the stage when it is only alleged (by the worker's claim or by an insurer or self-insurer following the claim) that 2 or more managed fund insurers are concurrently liable in respect of the claim. That is because it is sometimes not possible to establish whether the provisions relating to concurrent liability (section 15, 16, 17 or 22 of the 1987 Act) apply until court proceedings are finalised. The proposed provisions aim to avoid multiple representation of managed fund insurers in such proceedings.

**[5] Section 68B Deductions under section 68A—operation of sections 15, 16, 17 and 22**

Insert after section 68B (1):

- (1A) Subsection (1) extends to any liability for compensation that, but for section 22D, would be apportionable under section 22.

**Explanatory note**

Item [5] amends section 68B of the 1987 Act so as to extend subsection (1) of that section to any liability for compensation that, but for proposed section 22D, would be apportionable under section 22.

**[6] Schedule 6, Part 2 Provisions relating to liability for compensation**

Insert as clause 10 of Part 2 of Schedule 6:

**10 Claims involving multiple managed fund insurers**

- (1) Subject to subclauses (2) and (3), the provisions of section 22D and 68B (1A), as inserted by the *Workers Compensation Legislation Amendment Act 2000*, extend:
- (a) to any injury received before the commencement of those provisions, and
  - (b) to any series of injuries where the first injury was received before the



commencement of those provisions,

and (in the case of a series of injuries) so extend even if the first such injury was received before the commencement of this Act.

- (2) The provisions of section 22D (as so inserted) do not apply to or in respect of an injury (other than one of a series of injuries) if, before the commencement of those provisions:
- (a) a managed fund insurer has entered into a contribution agreement under section 15 or 16 in relation to the injury, or
  - (b) a worker or other person has received or agreed to receive compensation in relation to the injury, or
  - (c) court proceedings have been commenced or determined in relation to the injury.
- (3) The provisions of section 22D and 68B (1A) (as so inserted) do not apply to or in respect of any series of injuries if, before the commencement of those provisions:
- (a) a managed fund insurer has entered into an apportionment agreement under section 22 in relation to that series of injuries, or
  - (b) a worker or other person has received or agreed to receive compensation in respect of any matter referred to in section 22 (1) (a), (b) or (c) resulting from that series of injuries, or
  - (c) court proceedings have been commenced or determined in respect of any matter referred to in section 22 (1) (a), (b) or (c) resulting from that series of injuries.

**Explanatory note**

Item [6] inserts a transitional provision to apply the amendment made by this Schedule to injuries arising before the commencement of the amendments.

**Schedules 10-23 (Repealed)**