

Workers Compensation Amendment (Insurance Reform) Act 2003 No 81

[2003-81]



New South Wales

Status Information

Currency of version

Repealed version for 20 June 2006 to 6 December 2007 (accessed 22 December 2024 at 5:30)

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

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by Part 2 of Sch 5 to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2007 No 82](#) with effect from 7.12.2007.

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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Contents

Long title	3
1 Name of Act	3
2 Commencement	3
3 Amendment of Workers Compensation Act 1987 No 70	3
4 Amendment of other Acts	3
Schedule 1 (Repealed)	3
Schedule 2 Miscellaneous and consequential amendments to Workers Compensation Act 1987	3
Schedule 3 Amendment of other Acts	7

Workers Compensation Amendment (Insurance Reform) Act 2003 No 81



New South Wales

An Act to amend the *Workers Compensation Act 1987* to reform the legislative framework for workers compensation insurance; to make miscellaneous and consequential amendments to that Act, the *Workplace Injury Management and Workers Compensation Act 1998* and certain other Acts; and for other purposes.

1 Name of Act

This Act is the *Workers Compensation Amendment (Insurance Reform) Act 2003*.

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 Amendment of *Workers Compensation Act 1987 No 70*

The *Workers Compensation Act 1987* is amended as set out in Schedules 1 and 2.

4 Amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule.

Schedule 1 (Repealed)

Schedule 2 Miscellaneous and consequential amendments to *Workers Compensation Act 1987*

(Section 3)

[1], [2] (Repealed)

[3] Section 17 Loss of hearing—special provisions

Omit section 17 (1) (f). Insert instead:

(f) where the Commission is satisfied that a contribution required to be made under paragraph (d) cannot be recovered by an employer referred to in paragraph (c), the Commission may direct the Nominal Insurer to pay to that employer out of the Insurance Fund such amount, not exceeding the amount of the contribution, as the Commission considers appropriate and the Nominal Insurer is to pay out that amount accordingly as if it were a payment made in respect of a claim under Division 6 of Part 4,

[4] Section 22 Compensation to be apportioned where more than one injury

Omit section 22 (2) (c). Insert instead:

(c) a liability in respect of a claim under Division 6 of Part 4, and

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

Omit “under the Uninsured Liability and Indemnity Scheme” from section 22A (7).

Insert instead “in respect of a claim under Division 6 of Part 4”.

[6] Part 4, heading

Omit “**Compensation—claims and proceedings**”.

Insert instead “**Uninsured liabilities**”.

[7] Part 4, Division 6, heading

Omit “**Uninsured Liability and Indemnity Scheme**”.

Insert instead “**Uninsured liabilities**”.

[8] Section 138 Definitions

Omit the definition of *Scheme*.

[9] Sections 139, 141A, 143, 144 and 144A

Omit the sections.

[10] Section 140 Persons eligible to make claims

Omit “under the Scheme may be made as provided by this section” from section 140 (1).

Insert instead “under this Division may be made against the Nominal Insurer”.

[11] Section 140 (2A)

Omit “and payment cannot be made under the Scheme”.

Insert instead “under this Division”.

[12] Sections 140 (3), 141 (1) and (4), 142, 145, 145A (2) and (3), 146 (2) and (6), 147 (3), 148 (1) (Application of other provisions of Act) and 148A (Nominal Insurer’s right of subrogation)

Omit “Authority” wherever occurring. Insert instead “Nominal Insurer”.

[13] Section 140 (3)

Omit “under subsection (2)”. Insert instead “under this Division”.

[14] Sections 140 (4) and (5) (a), 141 (1) and (2) (b) and 142 (1) and (3)

Omit “the Scheme” wherever occurring. Insert instead “this Division”.

[15] Section 141 Making of claims

Omit “Authority” from section 141 (2) where firstly and thirdly occurring.

Insert instead “Nominal Insurer”.

[16] Sections 142 (2) (a) and 145 (1) and (2)

Omit “WorkCover Authority Fund” wherever occurring.

Insert instead “Insurance Fund”.

[17] Section 142 (4)

Insert after section 142 (3):

- (4) For the purposes of subsection (3), *licensed insurer* means a specialised insurer or self-insurer.

[18] Sections 142A and 142B

Insert after section 142:

142A Nominal Insurer becomes insurer for claims

- (1) Subject to this section and the regulations, the provisions of this Act and the 1998 Act apply to and in respect of a claim under this Division as if the Nominal Insurer were the insurer under this Act of the relevant employer at the relevant time.
- (2) The regulations may prescribe modifications to the provisions of this Act and the 1998 Act for the purposes of their application under this section to and in respect of a claim under this Division.

- (3) A claim under this Division for work injury damages cannot be made until a claim under this Division for lump sum compensation in respect of the injury has been made and determined.

142B Proceedings before Commission on claim for compensation

- (1) On an application to the Commission for a determination of a claim for compensation under this Division, or on the commencement of proceedings in a court in respect of a claim for work injury damages under this Division:
- (a) the applicant must name the employer by whom the applicant alleges compensation is payable and the Nominal Insurer as respondents to, or defendants in, the proceedings, and
- (b) the Nominal Insurer may, by service of a notice on any person who, in the opinion of the Nominal Insurer, may be liable to pay to the applicant compensation under this Act (or may have insured that liability), join that person as a party to the proceedings.
- (2) The Commission may make orders providing for the reimbursement of the Insurance Fund under section 145.

[19] Section 145 Employer or insurer to reimburse Insurance Fund

Omit “under the Scheme” from section 145 (1) (a).

Insert instead “by the Nominal Insurer in respect of a claim under this Division”.

[20] Section 145A Recovery from directors of corporations liable to reimburse Insurance Fund

Omit section 145A (1). Insert instead:

- (1) If a corporation is liable to reimburse the Insurance Fund an amount for a payment made in respect of a claim under this Division and the amount is not recoverable from the corporation, the Nominal Insurer is entitled to recover the amount from a person who was a culpable director of the corporation at the relevant time.

[21] Section 145A (2)

Omit “for a payment made under the Scheme”.

Insert instead “for such a payment”.

[22] Section 145A (4) (a)

Omit “under the Scheme”.

Insert instead “in respect of the claim under this Division”.

[23] Section 146 Commutation of weekly payments

Omit section 146 (1).

[24] Sections 146 (2), 147 (3) and 148 (1) and (2)

Omit “under the Scheme” wherever occurring.

Insert instead “in respect of a claim under this Division”.

[25] Section 146 (4)

Omit “under the Scheme”.

Insert instead “that is the subject of a claim under this Division”.

[26] Section 147 Miscellaneous provisions

Omit section 147 (1). Insert instead:

- (1) If an award of compensation or work injury damages is made that is the subject of a claim under this Division, the Nominal Insurer may cause to be made such inquiries as it thinks fit to determine the genuineness of the grounds on which the award is sought or was based if:
 - (a) the employer did not appear and defend the proceedings for the award of compensation or work injury damages, or
 - (b) the award of compensation or work injury damages was made before the making of the claim under this Division and was obtained in default of appearance by the employer, or by consent of the worker and the employer, or
 - (c) the Nominal Insurer thinks that any such inquiries should be made for any reason it thinks fit.

[27] Section 147 (4)

Omit “the Authority” where firstly occurring.

Insert instead “the Nominal Insurer”.

[28]-[73] (Repealed)

Schedule 3 Amendment of other Acts

(Section 4)

3.1-3.3

(Repealed)

3.4 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 4 Definitions

Omit the definition of ***Uninsured Liability and Indemnity Scheme*** from section 4 (1).

[2], [3] (Repealed)

[4] Sections 97 (5) (c) and 108 (2) (c)

Omit “Uninsured Liability and Indemnity Scheme” wherever occurring.

Insert instead “Insurance Fund”.

[5] Section 108 Interim awards

Omit “the Uninsured Liability and Indemnity Scheme” from section 108 (2) (a) wherever occurring.

Insert instead “Division 6 of Part 4 of the 1987 Act”.

[6]-[15] (Repealed)