

[STATE ARMS]

New South Wales

Workers Compensation Legislation Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Workplace Injury Management and Workers Compensation Bill 1998*.

Overview of Bill

The object of this Bill is to amend the *Workers Compensation Act 1987* and other Acts in connection with the enactment of the *Workplace Injury Management and Workers Compensation Act 1998*.

Under the Bill:

- (a) the benefit provisions of the 1987 Act are maintained with modifications, including:
 - (i) the reduction, from 104 weeks to 52 weeks, in the maximum period of weekly compensation at total incapacity rates of partially incapacitated workers who are seeking suitable employment or receiving rehabilitation training,
 - (ii) the reduction in the rate of weekly "make-up" compensation for partially incapacitated workers who have unreasonably rejected suitable employment,
 - (iii) the removal of restrictions on the circumstances in which weekly payments of compensation may be commuted to a lump sum payment,
 - (iv) the facilitation of the discontinuation of weekly payments for partially incapacitated workers after 104 weeks in certain cases where the worker is not seeking or has not obtained suitable employment,
 - (v) the fixing of various rates of compensation for medical, hospital and other treatment by order of the WorkCover Authority rather than by regulation, and
- (b) the existing workers compensation insurance provisions of the 1987 Act are limited to insurance obtained up to 30 September 1999 and the Insurance Contribution Fund is closed, and
- (c) general savings and transitional provisions are enacted under the 1987 Act and other provisions consequentially repealed or amended, and
- (d) other Acts are consequentially amended.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Workers Compensation Act 1987* set out in Schedule 1.

Clause 4 is a formal provision giving effect to amendments to other Acts set out in Schedule 2.

Schedules

Schedule 1 contains amendments to the *Workers Compensation Act 1987* to give effect to the objects mentioned above.

The Schedule deals with the provisions of the 1987 Act as follows:

Part 1 Preliminary

The Part is retained with consequential amendments. The 1987 Act is to be construed with and as if it formed part of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act)—see **Schedule 1 [1]**.

Part 2 Compensation—Liability

The Part is retained with consequential amendments (and not replicated in the 1998 Act) and will apply to liability for past and future injuries.

Part 3 Compensation—Benefits

The Part is retained with consequential amendments (and not replicated in the 1998 Act) and will apply to benefits for past and future injuries. Amendments are also made to give effect to the following proposed modifications of benefits described above:

- (a) the reduction, from 104 weeks to 52 weeks, in maximum period of total incapacity payments for partially incapacitated workers who are seeking suitable employment or receiving rehabilitation training—see **Schedule 1 [11]**,
- (b) the reduction in the rate of weekly “make-up” compensation for partially incapacitated workers who have unreasonably rejected suitable employment (generally by restricting the comparison of the worker’s pre-injury and post-injury earning potential for the purposes of calculating the “make-up” compensation to award and similar rates for the work rather than actual gross rates)—see **Schedule 1 [17]**,
- (c) the removal of restrictions on the circumstances in which weekly payments of compensation may be commuted to a lump sum payment—see **Schedule 1 [20] – [31]**,
- (d) the facilitation of the discontinuation of weekly payments for partially incapacitated workers after 104 weeks in certain cases where the worker is not seeking or has not obtained suitable employment—see **Schedule 1 [32]**,
- (e) the fixing of various rates of compensation for medical, hospital and other treatment by order of the WorkCover Authority rather than by regulation—see **Schedule 1 [38] – [58]**.

Part 4 Compensation claims and proceedings

This Part is repealed and is transferred (with modifications) to Part 2 of Chapter 4 of the 1998 Act and (in the case of the Uninsured Liability and Indemnity Scheme) to Part 9 of Chapter 5 of the 1998 Act—See **Schedule 1 [63]**.

Part 5 Common law remedies

The Part is retained (and not replicated in the 1998 Act) and will apply to common law remedies for past and future injuries. Amendments are made to the provisions relating to elections between common law remedies and workers compensation and

to mitigation of damages—see **Schedule 1 [64] – [66]**.

Part 6 Rehabilitation of injured workers

This Part is repealed and its provisions incorporated (with modifications) in the proposed workplace injury management provisions of Chapter 3 of the 1998 Act—see **Schedule 1 [67]**.

Part 7 Insurance

This Part is retained with modifications to regulate the existing insurance arrangements. The new insurance arrangements are contained in Chapter 5 of the 1998 Act. Under the amendments to this Part:

- (a) Existing workers compensation licensed insurers ("the managed fund insurers") will continue to issue and renew policies of insurance up to 30 September 1999. No further policies will be issued or renewed by them after that date. They will continue to manage the statutory insurance funds established under the 1987 Act for liabilities under the policies issued or renewed by them.
- (b) Existing self-insurers will become self-insurers under the 1998 Act and will cease to be self-insurers under the 1987 Act from 30 September 1999.
- (c) The Insurers' Contribution Fund will be closed and amounts standing to the credit of the Fund will be distributed among the insurers entitled to claim against the Fund in proportion to each insurer's market share.
- (d) Provisions for defaulting insurers and insolvent insurers are consequentially amended so that any future defaults or insolvencies will be dealt with under the parallel provisions of the 1998 Act.
See **Schedule 1 [68] – [82]**.

Part 8

Previously repealed.

Part 9 WorkCover Authority Fund

This Part is repealed and is transferred (with modifications) to Part 6 of Chapter 2 of the 1998 Act—See **Schedule 1 [83]**.

Part 10 Miscellaneous

The Part is retained with consequential amendments. Many of the provisions of the Part are repealed as a consequence of the enactment of general miscellaneous provisions in the 1998 Act applying to both that Act and the 1987 Act.

Schedule 1 Deemed employment of workers

This Schedule is repealed and is transferred to Schedule 1 to the 1998 Act.

Schedule 2 Provisions relating to appointed conciliation officers

This Schedule is repealed and is transferred to Schedule 6 to the 1998 Act.

Schedules 3, 4

Previously repealed.

Schedule 5 Repeals

Retained.

Schedule 6 Savings, transitional and other provisions

This Schedule is retained and is amended to include the relevant provisions consequent on the enactment of this amending Act and the 1998 Act.

Schedule 2 contains consequential amendments to the following Acts:

Community Land Management Act 1989 No 202

Compensation Court Act 1984 No 89

Defamation Act 1974 No 18

Duties Act 1997 No 123

Fines Act 1996 No 99

Home Building Act 1989 No 147

Industrial Relations Act 1996 No 17

Motor Accidents Act 1988 No 102

Occupational Health and Safety Act 1983 No 20

Sporting Injuries Insurance Act 1978 No 141

Strata Schemes Management Act 1996 No 138

Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83

Workers' Compensation (Dust Diseases) Act 1942 No 14