

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 and Workplace Injury Management and Workers Compensation Act 1998 as follows:

- (a) to extend the jurisdiction of the Workers Compensation Commission (the Commission) in relation to disputes about treatment and services that have been provided to an injured worker so as to cover disputes about treatment and services that are proposed to be provided,
- (b) to make it clear that an appeal against a decision of an Arbitrator is not a full review of the Arbitrator's decision and is limited to a determination as to whether the decision appealed against was affected by error,
- (c) to make it clear that an appeal against a medical assessment is limited to the grounds on which the appeal is made and is not a review of any other aspect of the medical assessment,
- (d) to make it clear that fresh evidence cannot be adduced on an appeal against a medical assessment or an Arbitrator's decision unless the evidence was both not available to the appellant and not reasonably obtainable by the appellant before the proceedings concerned,

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- (e) to prevent a general provision for the review of approved medical specialist decisions being used to circumvent the required grounds for an appeal against or further assessment of such a decision,
- (f) to increase the monetary threshold for an appeal against an Arbitrator's decision to \$7,500 (currently \$5,000) and to remove the additional threshold that required the amount of compensation at issue to be at least 20% of the amount awarded in the decision appealed against,
- (g) to provide for appeals against interlocutory decisions of Arbitrators with the leave of the Commission,
- (h) to make it clear that there is an automatic right of appeal against an Arbitrator's decision once procedural requirements for such an appeal are satisfied,
- (i) to provide for the automatic indexation of the \$7,500 threshold for appeals against Arbitrator decisions and the limit on interim payment directions for medical expenses compensation,
- (j) to align the maximum age for determining economic loss for calculating work injury damages with the age for entitlement to the age pension,
- (k) to provide for the approval (rather than accreditation) of providers of rehabilitation services (for consistency with the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers) and to make consequential changes to terminology for consistency,
- (l) to remove restrictions on the maximum amount for which an employer is liable for workplace rehabilitation services provided to an injured worker,
- (m) to exempt a specialised insurer from the requirement to be authorised under the Insurance Act 1973 of the Commonwealth to carry on insurance business if the insurer does not require that authorisation to lawfully carry on the business,
- (n) to prevent a worker from recovering work injury damages until the worker has been paid any lump sum compensation to which the worker is entitled, so that the worker will not lose the entitlement to compensation by recovering damages before compensation is paid,
- (o) to ensure that the compensation to which a worker is entitled in respect of the obtaining of a permanent impairment medical certificate is paid as part of the

worker's claim for permanent impairment compensation,
(p) to restrict the jurisdiction of the Commission to determine the liability of an employer or insurer to reimburse the Insurance Fund so that the Commission will not be authorised to waive recovery against the employer or insurer or to interfere with a decision of the Nominal Insurer about waiver of recovery,
(q) to provide that an appeal against an Arbitrator's decision about weekly payments of compensation does not stay the decision, so that weekly payments of compensation will remain payable pending determination of an appeal,
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(r) to ensure that workers in receipt of weekly payments of compensation during partial incapacity who have returned to work will receive compensation up to the maximum rate in addition to earnings from their employer (by making it clear that the maximum rate operates as a limit on the compensation payable and not as a limit on the combined total of compensation and earnings),
(s) to provide for the provision of a security bond as a means of satisfying a requirement for the deposit of an amount of money as security by self-insurers, specialised insurers and retro-paid loss employers,
(t) to provide for the appointment of one or more senior approved medical specialists,
(u) to enact consequential amendments and savings and transitional provisions.

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.

Schedule 1 Amendment of Workers Compensation

Act 1987 No 70

Maximum weekly payments during partial incapacity

Schedule 1 [3]–[6] make it clear that for workers who return to work during partial incapacity, the maximum weekly compensation amount is a limit on the compensation payable and not a limit on the combined total of compensation and earnings. The amendments allow a worker to be paid up to the maximum weekly compensation amount in addition to the earnings from their employer (with the total of earnings and compensation not to exceed pre-injury earnings). The current limit on maximum weekly payments for workers who unreasonably reject suitable employment is not changed.

Occupational rehabilitation services

Schedule 1 [8] and [9] remove the definition that lists the services that constitute occupational rehabilitation services and replace it with a new definition of workplace rehabilitation service, which is defined to mean any services provided by a person approved as a provider of rehabilitation services for the purposes of return-to-work plans of employers. Schedule 1 [1], [2], [7], [10], [12] and [13] make consequential changes to reflect the change in terminology from occupational rehabilitation service to workplace rehabilitation service. The amendments flow from amendments to the 1998 Act to provide for the approval (rather than accreditation) of providers of rehabilitation services and are for the purpose of achieving consistency with the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers. Schedule 1 [14] omits provisions that set a maximum

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amount for which an employer is liable for occupational rehabilitation services provided to an injured worker.

Disputes about prospective medical treatment

Schedule 1 [11] provides that the jurisdiction of the Commission with respect to disputes about payment of medical, hospital and rehabilitation expenses extends to disputes about any proposed treatment or service. This will enable the Commission to determine a dispute about whether a treatment or service is reasonably necessary before the treatment or service is provided.

Reimbursement of medical certificate costs

Schedule 1 [15] ensures that the cost of obtaining a permanent impairment medical certificate is paid as part of the worker's claim for permanent impairment compensation so that liability for these costs will be properly assessed in conjunction with settlement of the claim for permanent impairment compensation.

Reimbursement of Insurance Fund—Commission's jurisdiction

Schedule 1 [19] restricts the jurisdiction of the Commission when it determines the liability of an employer or insurer to reimburse the Insurance Fund in respect of liabilities incurred by the Nominal Insurer on behalf of an employer or insurer. The Commission will not have jurisdiction to waive a liability to contribute to the Fund or to limit or otherwise affect any function of the Nominal Insurer to decide whether or not any such liability should be waived.

Retirement age for calculating economic loss

Schedule 1 [20] aligns the maximum age beyond which the earning capacity of a worker is to be disregarded when determining future economic loss with the age set under the Social Security Act 1991 of the Commonwealth as the age of entitlement to the age pension. This maximum operates for the purposes of awarding damages for future economic loss due to deprivation or impairment of earning capacity or (in the case of an award of damages under the Compensation to Relatives Act 1897) loss of expectation of financial support.

Other amendments

Schedule 1 [16]–[18] provide for the automatic indexation of the \$7,500 threshold for appeals against Arbitrator decisions and the limit on interim payment directions for medical expenses compensation. Indexation is on the basis of an index that tracks movements in award rates of pay, which is the same index that is used to automatically index various benefits under the 1987 Act.

Schedule 1 [22] exempts a specialised insurer from the requirement to be authorised under the Insurance Act 1973 of the Commonwealth to carry on insurance business if the insurer does not require that authorisation to lawfully carry on the business.

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Schedule 1 [21], [23] and [24] provide for the provision of a security bond as a means of satisfying a requirement for the deposit of an amount of money as security by self-insurers, specialised insurers and retro-paid loss employers.

Schedule 1 [25] enacts savings and transitional provisions for various amendments.

Schedule 1 [26] provides for the making of savings and transitional regulations.

Schedule 2 Amendment of Workplace Injury

Management and Workers

Compensation Act 1998 No 86

Approval of rehabilitation service providers

Schedule 2 [2] provides for the approval (instead of accreditation, as at present) of providers of rehabilitation services for the purposes of employers' return-to-work programs. The amendment is for consistency with the Nationally Consistent Approval Framework for Workplace Rehabilitation Providers. Schedule 2 [1] and [3]–[7] make consequential amendments.

Payment of lump sum compensation

Schedule 2 [8] prevents a worker from recovering work injury damages until the

worker has been paid any permanent impairment and pain and suffering compensation to which the worker is entitled. Section 151A of the 1987 Act prevents the payment of compensation after damages have been recovered. The amendment will prevent a worker from losing an entitlement to compensation by recovering damages before compensation is paid.

Appeal against medical assessment

Schedule 2 [12] and [14] make the following amendments to provisions dealing with appeals against medical assessments:

(a) An appeal against a medical assessment on the ground of additional relevant information will only be available if the additional information was both not available to and could not reasonably have been obtained by the appellant before the medical assessment. (Schedule 2 [12])

(b) An appeal against a medical assessment will be limited to a review on the grounds of appeal, to make it clear that the appeal is not a full review of the medical assessment. Provision for receiving fresh evidence on an appeal is clarified by being limited to evidence that was both not available and not reasonably obtainable before the medical assessment. (Schedule 2 [14])

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Appeal against decision of Arbitrator

Schedule 2 [15]–[18] make the following amendments to provisions dealing with appeals against decisions of Arbitrators:

(a) It will be made clear that an appeal against an Arbitrator's decision is to be limited to a determination of whether there was an error of fact, law or discretion (and to the correction of such an error) and that the appeal is not a review or new hearing. (Schedule 2 [16])

(b) It will be made clear that an appeal does not stay the operation of a decision for the payment of weekly payments of compensation, but otherwise does operate to stay the decision appealed against. (Schedule 2 [16])

(c) The Commission's discretion to admit new evidence on the appeal will be limited to cases where the new evidence was both not available to the appellant and not reasonably obtainable by the appellant before the proceedings concerned, or where failure to admit the new evidence would cause substantial injustice. (Schedule 2 [17])

(d) The monetary threshold for appeals will be increased to \$7,500 and the existing additional requirement that the amount at issue in the appeal be at least 20% of the amount awarded will be deleted. (Schedule 2 [15])

(e) The requirement for the leave of the Commission for an appeal will be deleted and it will be made clear that an appeal is automatically available if the monetary threshold and other procedural requirements are met.

(Schedule 2 [15])

(f) An appeal against an interlocutory decision will not be available except with the leave of the Commission and leave will not be able to be granted unless the Commission is satisfied that it is necessary or desirable for the proper and effective determination of the dispute. (Schedule 2 [15] and [18])

Further assessment or reconsideration of medical assessments

Schedule 2 [13] limits provision for referral of a medical assessment for further assessment or reconsideration to cases where there are grounds for appeal, to make it clear that further assessment is an alternative to appeal only where grounds for appeal exist. Schedule 2 [19] removes power for the reconsideration of matters by approved medical specialists, to avoid use of the reconsideration power as a means of avoiding the requirements for appeals against medical assessments.

Other amendments

Schedule 2 [9] is consequential on the amendments made by Schedule 1 [11] which provide that the jurisdiction of the Commission with respect to disputes about payment of medical, hospital and rehabilitation expenses extends to disputes about any proposed treatment or service.

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Schedule 2 [10] is consequential on the amendments made by Schedule 1 [16]–[18] which provide for the automatic indexation of the \$7,500 limit on interim payment directions for medical expenses compensation.

Schedule 2 [11] provides that one or more of the medical practitioners who are appointed as approved medical specialists for the purposes of assessing workers compensation medical disputes may be appointed as a senior approved medical specialist.