

## **Workers Compensation and Other Legislation Amendment Bill 2004**

New South Wales

### **Explanatory note**

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

#### Overview of Bill

The objects of this Bill are as follows:

- (a) to extend the time for instituting summary criminal proceedings under the *Occupational Health and Safety Act 2000* where an employer or an occupier of a place of work has a duty to report an incident,
- (b) to permit WorkCover to issue stop work orders to uninsured employers,
- (c) to provide for the payment of funeral expenses for work related deaths,
- (d) to provide for the appointment of Acting Deputy Presidents of the Workers Compensation Commission of New South Wales (the **Commission**),
- (e) to make changes to the method of appointment of approved medical specialists,
- (f) to permit the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales (the **Council**) to establish committees,
- (g) to provide that WorkCover may issue guidelines that specify the professional or other requirements for a medical practitioner to be permitted to assess the degree of permanent impairment of an injured worker.

#### 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 assent except as otherwise provided in the proposed section.

**Clause 3** is a formal provision that gives effect to the amendments to the Acts and Regulation set out in Schedules 1–6.

#### **Schedule 1 Amendment of Occupational Health and Safety Act 2000 No 40**

**Schedule 1 [3]** inserts a new section 107A in the *Occupational Health and Safety Act 2000* (the **Principal Act**) that permits proceedings for an offence, related to a work incident required to be notified to WorkCover, to be commenced within 2 years after the occurrence of the work incident or within 6 months of WorkCover becoming aware of the work incident (whichever provides the longer period to institute proceedings). It is to be conclusively presumed that WorkCover does not become aware of a work incident until certain criteria are met. Proceedings for an offence cannot be instituted more than 2 years after the occurrence of the work incident unless the Chief Executive Officer of WorkCover has certified in writing that the proceedings are in the public interest. The Chief Executive Officer may also certify when WorkCover became aware of the work incident. Any certificate given by the Chief Executive Officer is conclusive evidence as to the matters certified and cannot be challenged, reviewed or called into question in any proceedings before any court or tribunal. **Schedule 1 [5]** provides that proposed section 107A does not apply to or in respect of a work incident occurring before the commencement of that section.

**Schedule 1 [2]** makes a consequential amendment.

**Schedule 1 [1]** makes amendments by way of statute law revision.

**Schedule 1 [4]** enables regulations to be made for matters of a savings and transitional nature consequent on the amendments to the Principal Act.

#### **Schedule 2 Amendment of Workers Compensation**

##### **Act 1987 No 70**

**Schedule 2 [1]** amends section 27 of the *Workers Compensation Act 1987* (the **1987 Act**) to increase the maximum amount payable for reasonable funeral expenses to

\$9,000 in the case of the death of a worker who leaves no dependants.

**Schedule 2 [2]** provides that if compensation is payable for a death resulting from an injury and the worker leaves dependants, the employer must pay additional compensation equal to reasonable funeral expenses not exceeding the maximum amount payable under section 27 of the 1987 Act.

**Schedule 2 [3]** permits the Authority or a person authorised by the Authority to issue a stop work order to an employer if the Authority or the person reasonably suspects that the employer does not have a policy of insurance that complies with Division 1 of Part 7 of the 1987 Act. The order takes effect at the beginning of the fifth working day after the day on which it is given to the employer and the employer must (until the order is withdrawn) ensure that no work is performed for the employer by any worker of the employer. Failure to comply with an order is an offence (maximum penalty 500 penalty units (\$55,000) or imprisonment for 6 months, or both). An order may be withdrawn by the Authority or a person authorised by the Authority at any time, and is to be withdrawn if the employer produces a certificate of currency in accordance with section 163A of the 1987 Act.

**Schedule 2 [4]** provides that the amendments proposed in Schedule 2 [1] and [2] (the insertion of proposed section 27A and the increased amount for reasonable funeral expenses) extend to the death of a worker occurring on or after the date that this Bill is introduced into Parliament. Schedule 2 [4] also provides that the appointment of an approved medical specialist made before the commencement of proposed section 320 (1A) to the *Workplace Injury Management and Workers Compensation Act 1998* (the **1998 Act**) cannot be challenged, reviewed or called into question in any proceedings before any court or tribunal in certain circumstances. Schedule 2 [4] also provides that proposed section 376 (1) (a1) of the 1998 Act (to be inserted by Schedule 5 [6]) extends to guidelines issued before the commencement of that paragraph.

**Schedule 2 [5]** enables regulations to be made for matters of a savings and transitional nature consequent on the amendments made by the proposed Act.

#### **Schedule 3 Amendment of Workers' Compensation (Dust Diseases) Act 1942 No 14**

**Schedule 3 [1]** amends the *Workers' Compensation (Dust Diseases) Act 1942* to provide for the payment of reasonable funeral expenses in the case of a worker who dies due to a dust disease. The proposed amendment is in line with the proposed amendment to the *Workers Compensation Act 1987* in Schedule 2 [2]. **Schedule 3 [2]** provides that the proposed amendment in Schedule 3 [1] extends to the death of a person occurring on or after the date that this Bill is introduced into Parliament but before the commencement of Schedule 3 [1].

#### **Schedule 4 Amendment of Workers Compensation Regulation 2003**

**Schedule 4** amends clause 7 of the *Workers Compensation Regulation 2003* as a consequence of the proposed amendments to the *Workers Compensation Act 1987* in Schedule 2.

#### **Schedule 5 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86**

**Schedule 5 [5]** provides that the Council may make recommendations to the President of the Commission in relation to the appointment of approved medical specialists.

**Schedule 5 [6]** provides that guidelines issued by the Authority may specify professional or other requirements for medical practitioners to be permitted to assess the degree of permanent impairment of injured workers for the purposes of the 1987 Act or the 1998 Act.

**Schedule 5 [7]** permits the Council to establish committees to which it may delegate

its functions (other than the power of delegation). **Schedule 5 [3]** protects a member of a committee from personal liability and **Schedule 5 [4]** permits information to be disclosed to a committee.

**Schedule 5 [8]** permits Acting Deputy Presidents of the Commission to be appointed if a Deputy President is absent from duty or if the Minister determines such an appointment may be necessary having regard to the workload of the Commission and the need for the proper and efficient exercise of its functions. A person may be appointed as an Acting Deputy President only if the person is eligible to be appointed as a Deputy President. Such an appointment may be made for up to 12 months. An Acting Deputy President has the functions of a Deputy President and anything done by an Acting Deputy President in the exercise of those functions has effect as if it had been done by a Deputy President.

**Schedule 5 [1] and [2]** make amendments by way of statute law revision.

**Schedule 6 Amendment of Statutory and Other  
Offices Remuneration Act 1975 (1976**

**No 4)**

**Schedule 6** enables the Statutory and Other Offices Remuneration Tribunal to determine the remuneration to be paid to an Acting Deputy President of the Workers Compensation Commission. The proposed amendment is consequential on Schedule 5 [8].