



New South Wales

# Workers Compensation and Other Legislation Amendment Bill 2004

## 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].



New South Wales

# Workers Compensation and Other Legislation Amendment Bill 2004

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New South Wales

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

No. , 2004

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## **A Bill for**

An Act to make miscellaneous amendments to legislation dealing with workers compensation and occupational health and safety; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Workers Compensation and Other Legislation Amendment Act 2004</i> .	3 4
<b>2 Commencement</b>	5
(1) This Act commences on the date of assent, except as provided by subsection (2).	6 7
(2) Schedule 2 [3] commences on a day to be appointed by proclamation.	8
<b>3 Amendment of Acts and Regulation</b>	9
The Acts and Regulation specified in Schedules 1–6 are amended as set out in those Schedules.	10 11



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<b>Schedule 1</b>	<b>Amendment of Occupational Health and Safety Act 2000 No 40</b>	1
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	(Section 3)	3
<b>[1] Sections 48 (2) (f) (i) and 109</b>		4
	Omit “General Manager” wherever occurring.	5
	Insert instead “Chief Executive Officer”.	6
<b>[2] Section 107 Time for instituting proceedings for offences</b>		7
	Insert “or section 107A” after “this section” in section 107 (1).	8
<b>[3] Section 107A</b>		9
	Insert after section 107:	10
<b>107A Time for instituting proceedings—special provision for work incident notification</b>		11
		12
(1)	If an act or omission alleged to constitute an offence against this Act or the regulations gives rise to an incident (a <i>work incident</i> ) to which section 86 (Notification of incidents) applies, proceedings for the offence may be instituted:	13
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	(a) within 2 years after the occurrence of the work incident, or	17
	(b) within 6 months after WorkCover first becomes aware of the work incident,	18
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	whichever provides the longer period to institute proceedings.	20
(2)	It is to be conclusively presumed for the purposes of this section that WorkCover does not become aware of a work incident until whichever of the following happens first:	21
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	(a) notice of the incident is given in compliance with section 86, whether or not that notice is given within the time required under that section,	24
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	(b) WorkCover gives the employer or occupier concerned notice in writing that is expressed to be notice for the purposes of this section and indicates that WorkCover has become aware of the incident.	27
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(3)	The Chief Executive Officer of WorkCover may for the purposes of this section give a certificate in writing certifying as to when WorkCover first became aware of a work incident as provided by this section.	31
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(4)	Proceedings for an offence against this Act or the regulations cannot be instituted under this section 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.	1 2 3 4 5
(5)	A certificate given by the Chief Executive Officer of WorkCover under this section 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.	6 7 8 9
(6)	For the purposes of the application of this section to a mine, a reference in this section to section 86 is to be read as a reference:	10 11
(a)	in the case of a mine to which the <i>Mines Inspection Act 1901</i> applies—to section 47 of that Act or to such other provision of that Act as may be prescribed by the regulations, or	12 13 14 15
(b)	in the case of a mine to which the <i>Coal Mines Regulation Act 1982</i> applies—to section 86 of that Act or to such other provision of that Act as may be prescribed by the regulations.	16 17 18 19
(7)	This section applies despite anything in any other Act.	20
<b>[4]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	21
	Insert at the end of clause 1 (1):	22
	<i>Workers Compensation and Other Legislation Amendment Act 2004</i> (but only to the extent that it amends this Act)	23 24
<b>[5]</b>	<b>Schedule 3, Part 4</b>	25
	Insert after Part 3:	26
<b>Part 4</b>	<b>Provisions consequent on enactment of Workers Compensation and Other Legislation Amendment Act 2004</b>	27 28 29
<b>21</b>	<b>Time for instituting proceedings</b>	30
	Section 107A, as inserted by the <i>Workers Compensation and Other Legislation Amendment Act 2004</i> , does not apply to or in respect of a work incident (within the meaning of that section) that occurred before the commencement of that section.	31 32 33 34

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<b>Schedule 2</b>	<b>Amendment of Workers Compensation Act 1987 No 70</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Section 27 Death of worker leaving no dependants—funeral expenses</b>	4
	Omit section 27 (a). Insert instead:	5
	(a) \$9,000, or	6
<b>[2]</b>	<b>Section 27A</b>	7
	Insert after section 27:	8
<b>27A</b>	<b>Death of worker leaving dependants or partial dependants—funeral expenses</b>	9
	If compensation is payable under this Division for a death resulting from an injury and the worker leaves any dependants wholly or partially dependent upon the worker for support, the employer must pay additional compensation equal to reasonable funeral expenses not exceeding the maximum amount payable under section 27.	10
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<b>[3]</b>	<b>Section 163B</b>	17
	Insert after section 163A:	18
<b>163B</b>	<b>Issue of stop work order to uninsured employer</b>	19
(1)	The Authority or an authorised officer may issue a stop work order in writing to an employer (other than an employer who is a self-insurer) if the Authority or authorised officer reasonably suspects that the employer does not have a policy of insurance that complies with this Division.	20
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(2)	A stop work order takes effect at the beginning of the fifth working day after the day on which it is given to the employer and may be withdrawn at any time by the Authority or an authorised officer.	25
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(3)	A stop work order is to be withdrawn by the Authority or an authorised officer as soon as practicable after the employer to whom the order has been issued produces a certificate of currency in accordance with section 163A.	29
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- (4) After a stop work order takes effect, the employer to whom it has been issued must (until the order is withdrawn) ensure that no work is performed for the employer by any worker of the employer. 1  
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Maximum penalty: 500 penalty units or imprisonment for 6 months, or both. 5  
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- (5) In this section: 7  
*authorised officer* has the same meaning as in section 238 of the 1998 Act. 8  
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**[4] Schedule 6 Savings, transitional and other provisions** 10

Insert after Part 18H: 11

**Part 18I Provisions consequent on enactment of  
Workers Compensation and Other  
Legislation Amendment Act 2004** 12  
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**1 Payment of funeral expenses** 15

- (1) Section 27 (a), as substituted by the *Workers Compensation and Other Legislation Amendment Act 2004*, extends to the death of a worker occurring on or after the date that the Bill for that Act was first introduced into Parliament but before the commencement of the substitution. 16  
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- (2) Section 27A, as inserted by the *Workers Compensation and Other Legislation Amendment Act 2004*, extends to the death of a worker occurring on or after the date that the Bill for that Act was first introduced into Parliament but before the commencement of that section. 21  
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**2 Appointment of approved medical specialists** 26

The appointment of an approved medical specialist under section 320 of the 1998 Act made before the commencement of section 320 (1A), as inserted by the *Workers Compensation and Other Legislation Amendment Act 2004*, cannot be challenged, reviewed or called into question in any proceedings before any court or tribunal on the ground that the appointment was made in consultation with, or on the recommendation of, the Council or a committee of the Council. 27  
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**3 Qualifications to assess permanent impairment**

Section 376 (1) (a1) of the 1998 Act, as inserted by the *Workers Compensation and Other Legislation Amendment Act 2004*, extends to guidelines issued before the commencement of that paragraph.

**[5] Schedule 6, Part 20**

Insert at the end of clause 1 (1):

*Workers Compensation and Other Legislation Amendment Act 2004*

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<b>Schedule 3</b>	<b>Amendment of Workers' Compensation (Dust Diseases) Act 1942 No 14</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Section 8 Certificate of medical authority and rates of compensation</b>	4
	Omit section 8 (2A). Insert instead:	5
	(2A) The board is to pay from the Fund the reasonable expenses of a deceased person's funeral not exceeding the sum prescribed by or under section 27 of the Principal Act, but only if:	6
	(a) the person had dependants and those dependants are entitled to an award under subsection (1), or	7
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	(b) the person had no dependants, but any dependants of the person (had they existed) would have been entitled to an award under subsection (1).	9
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<b>[2]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	14
	Insert after Part 4:	15
<b>Part 5</b>	<b>Provisions consequent on enactment of Workers Compensation and Other Legislation Amendment Act 2004</b>	16
		17
		18
<b>12</b>	<b>Payment of funeral expenses</b>	19
	Section 8 (2A), as substituted by the <i>Workers Compensation and Other Legislation Amendment Act 2004</i> , extends to the death of a person occurring on or after the date that the Bill for that Act was first introduced into Parliament but before the commencement of the substitution.	20
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**Schedule 4      Amendment of Workers Compensation  
Regulation 2003**

(Section 3)

**Clause 7 Sec 27 (b): maximum amount for funeral expenses**

Omit clause 7 (1) (c). Insert instead:

- (c) in the case of a funeral held on or after 1 July 2000 but before the date that the Bill for the *Workers Compensation and Other Legislation Amendment Act 2004* was first introduced into Parliament—\$4,400, or
- (d) in the case of a funeral held on or after the date that the Bill for the *Workers Compensation and Other Legislation Amendment Act 2004* was first introduced into Parliament in respect of a death that occurred before that date—\$4,400.

**Note.** Section 27 (a) of, and clause 1 (1) of Part 18I of Schedule 6 to, the Act, as inserted by the *Workers Compensation and Other Legislation Amendment Act 2004*, provide a maximum amount for reasonable funeral expenses of \$9,000 in relation to a death occurring after the date that the Bill for that Act was first introduced into Parliament.

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<b>Schedule 5</b>	<b>Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86</b>	1
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		3
	(Section 3)	4
<b>[1] Section 4 Definitions</b>		5
	Insert in alphabetical order in section 4 (1):	6
	<i>Chief Executive Officer</i> or <i>General Manager</i> means the Chief Executive Officer of the Authority.	7
		8
<b>[2] Section 4 (1)</b>		9
	Omit the definition of <i>General Manager</i> .	10
<b>[3] Section 240 Personal liability</b>		11
	Omit “or the Council” from the definition of <i>body</i> in section 240 (1).	12
	Insert instead “, the Council or a committee of the Council”.	13
<b>[4] Section 243 Disclosure of information</b>		14
	Insert “(including a committee of the Council)” after “the Council” in section 243 (2) (a).	15
		16
<b>[5] Section 320 Appointment of approved medical specialists</b>		17
	Insert after section 320 (1):	18
	(1A) The Council may make recommendations to the President in relation to the appointment of a medical practitioner under subsection (1) and the President is to have regard to any such recommendation in making the appointment.	19
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<b>[6] Section 376 Issue of guidelines</b>		23
	Insert after section 376 (1) (a):	24
	(a1) the professional or other requirements (including qualifications, training or membership of professional bodies) for a medical practitioner to be permitted to assess (or carry out any function related to assessing), for the purposes of the Workers Compensation Acts, the degree of permanent impairment of an injured worker as a result of an injury,	25
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<b>[7] Schedule 2 Provisions relating to Council</b>	1
Insert after clause 14:	2
<b>15 Committees of Council</b>	3
(1) The Council may establish committees to assist it in connection with the exercise of any of its functions.	4 5
(2) It does not matter that any or all of the members of a committee are not members of the Council.	6 7
(3) The procedure for calling meetings of a committee and for the conduct of those meetings is to be determined by the Council or (subject to any determination by the Council) by the committee.	8 9 10
(4) The Council may delegate to a committee any of the functions of the Council, other than this power of delegation.	11 12
<b>[8] Schedule 5 Provisions relating to members of Commission</b>	13
Insert after clause 7:	14
<b>7A Acting Deputy Presidents</b>	15
(1) If a Deputy President is absent from duty, the Minister may appoint a person to be an Acting Deputy President during the absence of the Deputy President.	16 17 18
(2) The Minister may make an appointment for a particular absence or for any absence that occurs from time to time.	19 20
(3) The Minister may also appoint such additional Acting Deputy Presidents as the Minister determines may be necessary having regard to the workload of the Commission and the need for the proper and efficient exercise of its functions.	21 22 23 24
(4) A person may be appointed as an Acting Deputy President only if the person is eligible to be appointed as a Deputy President.	25 26
(5) An Acting Deputy President may be appointed for up to 12 months but may, despite the expiration of that period, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the Acting Deputy President before the expiration of that period.	27 28 29 30 31
(6) A retired judicial officer may be appointed as an Acting Deputy President even though that person has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.	32 33 34 35 36

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

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- (7) 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. 1  
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- (8) For the avoidance of doubt, an Acting Deputy President is a member of the Commission and is a Presidential member. 5  
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- (9) Clause 2 does not apply to an Acting Deputy President. 7
- (10) In this clause, *absence from duty* includes a vacancy in the office of Deputy President and an absence due to a Deputy President being Acting President in accordance with clause 7. 8  
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<b>Schedule 6</b>	<b>Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)</b>	1
		2
		3
	(Section 3)	4
<b>Schedule 2 Public offices</b>		5
Insert after “Deputy President of the Workers Compensation Commission” in Part 1:		6
		7
	Acting Deputy President of the Workers Compensation Commission	8
		9