



New South Wales

# WorkCover Legislation Amendment Act 1997 No 134

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New South Wales

# **WorkCover Legislation Amendment Act 1997 No 134**

Act No 134, 1997

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An Act to amend the *Workers Compensation Act 1987* and the *Sporting Injuries Insurance Act 1978* to make further provision with respect to false claims, conciliation, benefits and transitional arrangements; and for other purposes. [Assented to 16 December 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *WorkCover Legislation Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Workers Compensation Act 1987 No 70**

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

**4 Amendment of Sporting Injuries Insurance Act 1978 No 141**

The *Sporting Injuries Insurance Act 1978* is amended as set out in Schedule 2.

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## **Schedule 1    Amendment of Workers Compensation Act 1987**

(Section 3)

### **[1]    Section 3 Definitions**

Omit the definition of *Principal Conciliator* from section 3 (1).  
Insert instead:

*Principal Conciliator* means the person holding office as Principal Conciliator under Part 2 of the *Public Sector Management Act 1988*.

### **[2]    Section 57 Worker to notify return to work etc with other employer**

Omit “and” from section 57 (1) (a). Insert instead “or”.

### **[3]    Section 57 (1)**

Omit “20 penalty units”. Insert instead “40 penalty units”.

### **[4]    Section 58 Refund of weekly payments paid after return to work etc**

Insert after section 58 (5):

- (6) A court before which proceedings for an offence under section 57 are taken against a person may, on the application of the Authority (whether or not the person is convicted of the offence), make any order that it is satisfied the Compensation Court could make under this section as a result of the return to employment or change in employment to which the alleged offence relates. The standard of proof that applies in connection with an application under this subsection is proof on the balance of probabilities.

- (7) The power conferred on a court by subsection (6) is subject to the following limitations:
  - (a) it does not authorise the making of an order providing for the refund to be deducted from any future weekly payments of compensation to the extent that they are payable under an award of the Compensation Court,
  - (b) it does not authorise the making of an order of the kind described in subsection (4).
- (8) An order under subsection (6) is enforceable as a civil debt and may be recovered as such in any court of competent jurisdiction by the person to whom the order requires payment to be made.
- (9) A Local Court cannot order the payment of an amount under subsection (6) that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.
- (10) This section does not limit any other right of recovery that a person may have against another person in respect of any overpayment of compensation to that other person.

**[5] Section 87F Principal Conciliator for new claims**

Omit section 87F (1). Insert instead:

- (1) The Principal Conciliator is taken to be a conciliation officer.

**[6] Section 92 Making a claim for compensation**

Omit "must include" from section 92 (1C).

Insert instead "must (unless the claim is a claim under section 10, 11 or 12) include".



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**[7] Section 92B False claims etc**

Omit "50 penalty units or imprisonment for 12 months" from section 92B (1).

Insert instead "100 penalty units or imprisonment for 2 years".

**[8] Section 92C**

Insert after section 92B:

**92C Order for refund of overpayments of compensation**

- (1) This section applies to a payment to a person, purportedly made pursuant to an obligation arising under this Act, to which the person is not entitled under this Act. Such a payment is referred to in this section as an overpayment.
- (2) If a court before which proceedings for an offence under section 92B are taken against a person is satisfied on the balance of probabilities that the person has received an overpayment as a result or partly as a result of the act that is alleged to constitute the offence, the court may, on the application of the Authority (whether or not the person is convicted of the offence), order the person to refund the amount of the overpayment to the person who made the payment.
- (3) Any such refund may, in accordance with the terms of the court's order, be deducted from future payments of compensation, even if (in the case of weekly payments of compensation) the compensation is payable under a direction of a conciliation officer, but not (whatever the type of compensation) if it is payable under an award of the Compensation Court.
- (4) The refund of an overpayment cannot be ordered both under this section and under section 58.
- (5) An order under this section is enforceable as a civil debt and may be recovered as such in any court of competent jurisdiction by the person to whom the order requires payment to be made.

- (6) A Local Court cannot order the payment of an amount under this section that when added to the amount of any penalty imposed for the offence concerned would exceed an amount equivalent to 500 penalty units.
- (7) This section does not limit any other right of recovery that a person may have against another person in respect of any overpayment to that other person.

**[9] Section 93E**

Insert after section 93D:

**93E Insurer to provide copies of reports to worker**

- (1) The regulations may make provision for or with respect to requiring an insurer to provide a worker, a worker's legal representative or any other person, within the period required by the regulations, with a copy of a specified report, or a report of a specified kind, obtained by the insurer in relation to a claim by the worker.
- (2) Without limiting subsection (1), the kind of reports to which the regulations under this section can apply include investigators' reports, rehabilitation providers' reports and reports of assessments under section 40A (Assessment of incapacitated worker's ability to earn).
- (3) If an insurer fails to provide a copy of a report as required by the regulations under this section:
  - (a) the insurer cannot use the report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the report for any other purpose prescribed by the regulations for the purposes of this section, and
  - (b) the report is not admissible in proceedings on such a dispute before a conciliation officer or the Compensation Court.

**[10] Section 94A Insurers to give notice and reasons when liability disputed**

Insert "or any aspect of a claim" after "claim" in section 94A (1).



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**[11] Section 98A Power of conciliation officer to require information**

Omit section 98A (6) (c).

**[12] Section 98AA**

Insert after section 98A:

**98AA Power of conciliation officer to provide information and documents to a party**

- (1) When information or documents are furnished or produced to a conciliation officer by a party to a dispute (whether or not pursuant to a requirement under this Act), the conciliation officer may furnish or produce the information or documents to any other party to the dispute.
- (2) The regulations may make provision for or with respect to any of the following matters:
  - (a) specifying cases and circumstances in which a conciliation officer is required to exercise the conciliation officer's powers under subsection (1),
  - (b) excepting specified kinds of information or documents from the operation of this section,
  - (c) specifying circumstances in which information or documents furnished or produced to a conciliation officer may not be furnished or produced by the conciliation officer to another party to the dispute.

**[13] Section 100 Protection of conciliation officers**

Insert at the end of the section:

- (2) A conciliation officer is, in any legal proceedings, competent but not compellable to give evidence or produce documents in respect of any matter in which he or she was involved in the course of the exercise of his or her functions as a conciliation officer.

**[14]    Section    102A    New   claims   for   weekly   payments—  
commencement of payments**

Insert after section 102A (5):

- (5A) A person who has or anticipates having such a reasonable excuse must notify the claimant in writing as soon as practicable.

**[15]    Section 106FAA**

Insert after section 106FA:

**106FAA   Effect on time periods of incorrect referral of claim to  
Senior Conciliation Officer**

If the dispute in respect of a new claim has been incorrectly referred to the Senior Conciliation Officer (but in all other respects has been correctly referred), the periods referred to in section 106FB (1) (c), 106FC (1) (b) and 106FD (1) (b) do not begin to run until the dispute has been correctly referred to the Principal Conciliator.

**[16]    Section 106FB Restrictions on commencing court proceedings  
about weekly payments**

Insert “(including any extension under section 102A (4))” before “has elapsed” in section 106FB (2) (b).

**[17]    Section 117 Regulations fixing maximum costs recoverable by  
legal practitioners or agents**

Insert “or agent services” after “legal services” wherever occurring in section 117 (1).

**[18]    Section 117 (2)**

Insert at the end of the subsection:

An agent is not entitled to be paid or recover for an agent service or other matter an amount that exceeds any maximum costs fixed for the service or matter by the regulations under this section.

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**[19] Section 117 (3)**

Insert "or agent" after "legal practitioner".

**[20] Section 117 (6)**

Insert ", except as provided by this section" after "1987".

**[21] Section 117 (7)**

Omit "In this section *costs* includes:". Insert instead:

In this section:

*agent* means a person who acts as agent for a person in connection with a claim for compensation under this Act.

*agent service* means any service performed by a person in the person's capacity as an agent.

*costs* includes:

**[22] Section 129 Medical examination of workers at direction of employer**

Insert after section 129 (4):

- (5) The regulations may make provision for or with respect to requiring an employer or insurer to provide a worker, a worker's legal representative or any other person, within the period required by the regulations, with a copy of any medical opinion or report furnished to the employer or insurer by a medical practitioner in connection with an examination of the worker pursuant to a requirement under this section.
- (6) If an employer or insurer fails to provide a copy of an opinion or report as required by the regulations under subsection (5):
  - (a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of



compensation to be paid and cannot use the opinion or report for any other purpose prescribed by the regulations for the purposes of this section, and

- (b) the opinion or report is not admissible in proceedings on such a dispute before a conciliation officer or the Compensation Court.

**[23] Section 156A Misleading conduct by insurers and insurance intermediaries**

Omit "broker" wherever occurring.

Insert instead "insurance intermediary".

**[24] Schedule 6, Part 4 Provisions relating to weekly payments of compensation**

Insert after clause 8 (2):

- (3) Section 58 (6) of this Act (as inserted by the *WorkCover Legislation Amendment Act 1997*) extends to weekly payments of compensation made before the commencement of that subsection and to a conviction for an offence committed before the commencement of that subsection. However, that subsection does not apply to enable an order under that section to be made in respect of a conviction for an offence in proceedings commenced before the commencement of that subsection.

**[25] Schedule 6, Part 9 Provisions relating to notice of injury and claims for compensation**

Insert after clause 7:

**8 Refund of overpayments—false claims**

Section 92C (as inserted by the *WorkCover Legislation Amendment Act 1997*) extends to payments of compensation made before the commencement of that

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section and to a conviction for an offence committed before the commencement of that subsection. However, that section does not apply to enable an order under that section to be made in respect of a conviction for an offence in proceedings commenced before the commencement of that section.

**9 Claims not requiring medical certificate about substantial contributing factor**

The amendment made to section 92 (1C) by the *WorkCover Legislation Amendment Act 1997* operates as from the commencement of that subsection.

**[26] Schedule 6, Part 18 Special provisions relating to coal miners**

Omit clause 1 (3) (c) and (d). Insert instead:

- (c) occurs during the first 104 weeks of incapacity but after the first 78 weeks of incapacity.

**[27] Schedule 6, Part 18, clause 1 (4)**

Omit the first sentence. Insert instead:

For the purposes of subclause (3), the first 78 weeks of incapacity and the first 104 weeks of incapacity are the periods of incapacity for work (whether total or partial, or both) of 78 and 104 weeks, respectively, after the worker becomes entitled to weekly payments of compensation in respect of the incapacity.

**[28] Schedule 6, Part 18, clause 1 (5)**

Insert after clause 1 (4):

- (5) The amendments made to subclauses (3) and (4) by the *WorkCover Legislation Amendment Act 1997* are taken to have had effect from the commencement of those subclauses (as inserted by the *WorkCover Legislation Amendment Act 1996*).



## **Schedule 2      Amendment of Sporting Injuries Insurance Act 1978**

(Section 5)

### **[1]      Section 4 Definitions**

Omit the definitions of *school* and *the Department* from section 4 (1).

Insert instead:

*school* means a government school or a registered non-government school under the *Education Reform Act 1990*.

*the Department* means the Department of Sport and Recreation.

### **[2]      Section 25 Payment of benefits for injuries**

Omit "\$24,150" from section 25 (2) (a).

Insert instead "\$27,530".

### **[3]      Section 25 (2) (b)**

Omit "\$34,650". Insert instead "\$39,500".

### **[4]      Section 25 (3)**

Omit "\$62,000". Insert instead "\$70,680".

### **[5]      Section 25 (5)**

Omit "\$150,000". Insert instead "\$171,000".

### **[6]      Section 26 Payment of benefits for death**

Omit "\$62,000" wherever occurring. Insert instead "\$70,680".

### **[7]      Section 26 (2) and (2A)**

Omit "\$2,500" wherever occurring. Insert instead "\$2,850".

**[8] Section 26 (4) (c)**

Omit "\$150,000". Insert instead "\$171,000".

**[9] Section 37**

Insert after section 36:

**37 Savings and transitional provisions**

Schedule 5 has effect.

**[10] Schedule 1**

Omit the Schedule. Insert instead:

**Schedule 1 Benefit tables**

(Sections 4 (1), 25)

**Table A****\$****Part 1 Injuries related to arms**

Permanent loss of not less than the percentage, prescribed by the regulations, of the use of:

(a)	either arm or the greater part of an arm	43,265
(b)	lower part of either arm	37,050
(c)	either hand or 4 fingers and thumb of either hand	37,050
(d)	thumb	16,075
(e)	index finger	10,715
(f)	middle, ring or little finger	5,645

**Part 2 Injuries related to legs**

Permanent loss of not less than the percentage, prescribed by the regulations, of the use of:

(a)	either leg or the greater part of a leg	39,500
(b)	lower part of either leg	33,970
(c)	foot	32,945
(d)	great toe	10,715

**Table A****\$****Part 3 Injuries related to sight**

1	Permanent and total loss of sight of both eyes (or of one eye, if it was the only sighted eye)	55,575
2	Permanent loss of not less than the percentage, prescribed by the regulations, of the use of:	
	(a) one eye, if it was the only sighted eye	39,500
	(b) one eye, if it was not the only sighted eye	23,030

**Part 4 Miscellaneous injuries**

1	Permanent loss of not less than the percentage, prescribed by the regulations, of:	
	(a) hearing in both ears	33,970
	(a) power of speech	33,970
2	Permanent loss of sighted eye	12,310
3	Permanent and total loss of the use of:	
	(a) both kidneys (or of one kidney, if it was the only functioning kidney)	58,710
	(b) one kidney, if it was not the only functioning kidney	7,070
	(c) spleen	7,070

**Table B****\$****Part 1 Injuries related to cognition**

Permanent loss of:

(a)	mental capacity	171,000
(b)	sense of smell	9,290
(c)	sense of taste	9,290

**Part 2 Physical injuries**

Permanent loss of:

(a)	all sexual organs or part of them	27,530
(b)	sightless eye	12,310

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**[11] Schedule 2 Constitution and procedure of Sporting Injuries Committee**

Omit "6 members" from clause 2 (1).  
Insert instead "7 members".

**[12] Schedule 2, clause 2 (3)**

Omit "5 members". Insert instead "6 members".

**[13] Schedule 2, clause 2 (3) (a)**

Omit the paragraph. Insert instead:

- (a) 2 shall be persons appointed on the nomination of the Minister for Sport and Recreation, with one being nominated to represent the interests of disabled persons engaged in sporting or athletic activities,

**[14] Schedule 2, clause 11**

Omit "2 other". Insert instead "3 other".

**[15] Schedule 5**

Insert after Schedule 4:

**Schedule 5 Savings and transitional provisions**

(Section 37)

**Part 1 Preliminary**

**1 Regulations**

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the following:

*WorkCover Legislation Amendment Act 1997*

- (2) A provision of a regulation authorised by this clause may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.



- (3) To the extent to which a provision of a regulation authorised by this clause takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

## **Part 2      WorkCover Legislation Amendment Act 1997**

### **2 References to superseded terms**

In any other Act, in any instrument made under another Act, in any instrument made under this Act and in force on the commencement of this clause, and in an instrument of any other kind:

- (a) a reference to a registered player under this Act is to be read as a reference to a registered participant under this Act, and
- (b) a reference to an enrolled player under this Act is to be read as a reference to an enrolled student participant under this Act.

### **3 Increase in benefits**

An amendment made by Schedule 2 [2]–[8] or [10] of the *WorkCover Legislation Amendment Act 1997* does not apply to or in respect of an injury arising out of an authorised activity, or any death as a consequence of such an injury, if the activity took place before the commencement of the amendment.



**[16] The whole Act**

Omit “registered player” and “registered players” wherever occurring.

Insert instead “registered participant” and “registered participants” respectively.

**[17] The whole Act**

Omit “enrolled player” and “enrolled players” wherever occurring.

Insert instead “enrolled student participant” and “enrolled student participants” respectively.

[Minister’s second reading speech made in—  
Legislative Assembly on 26 November 1997  
Legislative Council on 2 December 1997]

