



New South Wales

Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025

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 amend the *Workers Compensation Act 1987* (**the Act**) to—
 - (i) implement changes to liability and entitlements for psychological injuries, and
 - (ii) provide for the process of assessing the degree of permanent impairment, and
 - (iii) enable disputes about liability for a lump sum death benefit to be settled, subject to agreement by the Personal Injury Commission, and
 - (iv) enable regulations to be made to expand the classes of claims which are eligible for commutations, subject to approval by the Personal Injury Commission in a particular case,
- (b) to make miscellaneous amendments to the *Workplace Injury Management and Workers Compensation Act 1998*, the *Personal Injury Commission Act 2020*, the *State Insurance and Care Governance Act 2015* and other legislation,
- (c) to amend the *Work Health and Safety Act 2011* to provide for duties of persons conducting businesses or undertakings involving digital work systems.

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.

Schedule 1 Amendment of Workers Compensation Act 1987 No 70

Schedule 1.1 provides for matters relating to whole person impairment, including the following—

- (a) the cessation of weekly compensation after 130 weeks, subject to the worker's degree of permanent impairment,
- (b) an increase in the degree of permanent impairment required to access work injury damages,
- (c) an increase in the degree of permanent impairment required for access to lump sum compensation benefits for non-economic loss,
- (d) the entitlement to medical and related treatment for workers who have a primary psychological injury, being, subject to the worker's degree of permanent impairment—
 - (i) one year from the day the claim is made, if weekly compensation is not paid to the worker, or
 - (ii) one year after weekly payments cease, if weekly payments are paid to the worker.

Schedule 1.2 provides for the settlement of a claim that is the subject of a dispute about liability for a lump sum death benefit that has been referred for determination by the Personal Injury Commission.

Schedule 1.3 inserts proposed Part 6, which provides for the way in which the degree of permanent impairment that results from an injury must be assessed.

Proposed Part 6, Division 2 provides for the permanent impairment assessment process, the powers of permanent impairment assessors, principal assessment certificates and the ability for further principal assessments to be made.

In particular, proposed section 153K provides for applications to be made to the State Insurance Regulatory Authority by an insurer or a worker for a principal assessment. Proposed section 153L provides that, subject to some exceptions including an unexpected increase in the worker's permanent impairment of more than 10 percentage points, only one assessment can be made of an injured worker.

Proposed Part 6, Division 3 provides for the making of agreements entered into by the injured worker and employer or insurer, including a requirement that all parties agree on the degree of permanent impairment that has resulted from the injury. The proposed division also provides that the State Insurance Regulatory Authority must keep a register of permanent impairment assessors. The Personal Injury Commission has jurisdiction to determine disputes about liability and medical disputes.

Schedule 1.4 clarifies that the entitlements of injured workers are determined based on the Wage Price Index (NSW) issued by the Australian Bureau of Statistics, provides for the annual indexation of entitlements, and aligns the dates on which entitlements are adjusted.

Schedule 1.5 provides that regulations may be made to allow access to voluntary commutations for certain classes of claims, subject to the oversight and approval of the Personal Injury Commission.

Schedule 1.6 inserts proposed Part 7, Division 4A, which provides that the State Insurance Regulatory Authority (the *Authority*) may accept a written undertaking given by an insurer in relation to a contravention or alleged contravention by the insurer in relation to the Workers Compensation Acts. The proposed division also makes it an offence for an insurer to contravene an undertaking given by the insurer that is in effect.

Schedule 1.7 transfers responsibility for the Insurers' Guarantee Fund from the Authority to Insurance and Care NSW.

Schedule 1.8 inserts definitions of *act of violence*, *AIDS*, *AWE*, *CPI*, *HIV*, *indictable criminal conduct*, *large employer*, *lump sum death benefit*, *PIAWE*, *procedural directions* and *WPI*, and defines and provides for the interpretation of *bullying*, *excessive work demands*, *primary*

psychological injury, psychological injury, racial harassment, reasonable management action, relevant event, secondary psychological injury, sexual harassment, traumatic incident and vicarious trauma.

A **relevant event** is defined as being subjected to an act of violence or a threat of violence, indictable criminal conduct, witnessing a traumatic incident or a dead or seriously injured person at the scene of a traumatic incident, experiencing vicarious trauma, being subjected to sexual harassment, racial harassment, bullying or excessive work demands. Other relevant events may be prescribed by the regulations.

The schedule also provides that no compensation is payable for a primary psychological injury to a worker unless—

- (a) a relevant event caused the primary psychological injury, and
- (b) there is a real and direct connection between the relevant event and the worker's employment, and
- (c) the worker's employment is the main contributing factor to the primary psychological injury.

Schedule 1.9 provides that a decision about the amount of an injured worker's pre-injury average weekly earnings is not a work capacity decision and that a work capacity decision or decision in relation to the pre-injury average weekly earnings may proceed to determination by the Personal Injury Commission.

The schedule also provides that an employer is liable to pay the cost of reasonable and necessary medical or hospital treatment and rehabilitation, domestic assistance and workplace rehabilitation services.

The schedule also increases the maximum penalty for a large employer that does not hold a workers compensation insurance policy and makes it an offence if an employer recklessly fails to give an insurer information that enables the insurer to accurately calculate a workers compensation premium for the employer's workers.

Schedule 1.10 inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86

Schedule 2 provides for miscellaneous amendments, including the insertion of special provisions applying to a claim for bullying, excessive work demands, sexual or racial harassment (each **relevant conduct**). Within 42 days after a claim is made, an insurer must accept the claim and commence weekly payments or dispute liability. If a claim is declined by an insurer, the worker may seek an internal review by the insurer. Following an internal review, the worker may lodge an application to the Industrial Relations Commission. The Industrial Relations Commission may determine whether the conduct the subject of the claim was relevant conduct. If the Industrial Relations Commission determines that relevant conduct occurred, and the insurer continues to dispute the claim, the dispute may be referred for determination by the Personal Injury Commission.

Workers who make claims for relevant conduct are entitled to weekly compensation during the period of determination of the claim. If the claim is accepted, workers are entitled to backpay of weekly benefits, aligned with weekly benefits for other compensation claims.

Schedule 3 Amendment of Personal Injury Commission Act 2020 No 18

Schedule 3 provides that the Personal Injury Commission may appoint a tutor to represent a person under legal incapacity in proceedings affecting the person and provides for the functions

and purpose of the Independent Review Officer and the Independent Legal Assistance and Review Service managed by the Independent Review Officer.

Schedule 3[3] provides that the President of the Personal Injury Commission may make certain orders prohibiting or restricting publication or details of certain decisions and other information. **Schedule 3[2] and [4]** are consequential amendments.

Schedule 3[5]–[9] provide for matters relating to the Independent Review Officer and funding for legal and associated costs.

Schedule 4 Amendment of Work Health and Safety Act 2011 No 10

Schedule 4 provides that a person conducting a business or undertaking that uses a digital work systems must ensure, so far as is reasonably practicable, that the allocation of work by or using the digital work system is without risks to the health and safety of any person and makes consequential amendments to require reasonable assistance to be provided to a WHS entry permit holder to access and inspect a digital work system in particular circumstances.

Schedule 5 Amendment of other legislation

Schedule 5.1 amends the *State Insurance and Care Governance Act 2015* to provide that—

- (a) the Insurers' Guarantee Fund established under the *Workers Compensation Act 1987*, section 227 is a scheme fund for which the board of directors of Insurance and Care NSW must determine investment strategies, and
- (b) an appointed director of ICNSW may, by written notice given to the Minister, direct that the appointed director's remuneration be paid to the employee body or employer body that nominated the appointed director.

Schedule 5.2 amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to make an amendment consequential on Schedule 1.8 of the proposed Act and provides that the *Workers Compensation Act 1987*, Part 1, Division 1 has effect as if included in the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

Schedule 5.3 amends the *Workers Compensation Regulation 2016* to provide that for certain workers who contract COVID-19 in the course of the worker's employment, the date that marks the end of the worker's incapacity to work as a result of COVID-19 is the date specified in the relevant certificate of capacity.