

Workers Compensation Legislation Amendment Bill 2001

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*, the *Workplace Injury Management and Workers Compensation Act 1998* (**the Workers Compensation Acts**) and certain other Acts to provide for the following:

- (a) provisional acceptance of liability for workers compensation within 7 days of notification of injury (thereby requiring limited payments of weekly benefits for up to 12 weeks to commence prior to liability being determined),
- (b) removal of the requirement for the Compensation Court to determine lump sum commutation of workers compensation benefits, subject to additional requirements for independent advice and scrutiny and registration of commutation agreements,
- (c) provision of enhanced assistance and information to injured workers and employers in connection with their rights and obligations under the legislation,
- (d) establishment by the WorkCover Authority (**WorkCover**) of advisory services to provide claims assistance to workers, employers and insurers and funding by WorkCover of the provision of those services by employee or employer associations for 3 years,
- (e) expanded sanctions for insurers that fail to make decisions on claims within the prescribed time frames, including requirements to pay administrative fees where such matters are determined by the new Claims Assessment Service,
- (f)a Claims Assessment Service (comprising a Director, Principal Commissioner, other Commissioners, and medical assessors) that will provide a dispute resolution service for disputes about workers compensation, assessment of common law claims, oversight of commutations and binding medical assessment,
- (g) directions by the Director for interim payment of weekly benefits for up to 12 weeks and reasonable and necessary medical treatment (pending full determination of a dispute) with provision for further directions,
- (h) binding determination of disputed medical issues by a medical assessor in the Claims Assessment Service,
- (i) determination of disputes about workers compensation by a Commissioner in the Claims Assessment Service with the decisions of a Commissioner being final and binding on the parties (subject to review by the Principal Commissioner and provision for the Director to refer a question of law to the Compensation Court),
- (j)a claim against an employer for common law damages in respect of an injury for which workers compensation is payable is to be assessed by a Commissioner before the matter can proceed to court (paralleling similar provisions of the *Motor Accidents Compensation Act 1999*),
- (k) the Commissioners will have the same jurisdiction that the Compensation Court presently has under the Workers Compensation Acts (including jurisdiction to determine other miscellaneous matters arising under workers compensation legislation, such as apportionment disputes),
- (l)a party to a determination or assessment by a Commissioner will be able to request a review of the determination or assessment on the basis of a mistake in a material respect and the review will be conducted by the Principal Commissioner or by another Commissioner nominated by the Principal Commissioner,
- (m) existing arrangements for the conciliation of disputes by conciliation officers and the

- determination of disputes by the Compensation Court will continue in respect of existing claims (subject to the transfer of existing claims to the new claims provisions),
- (n) claimants, employers and insurers will be entitled to legal representation before Commissioners but an insurer will not be entitled to representation if the claimant is unrepresented,
 - (o) existing cost sanctions will be expanded to apply to legal representatives who contribute to delay,
 - (p) the regulations will be able to provide for the assessment or taxation of costs,
 - (q) entitlement to lump sum compensation for non-economic loss will be based on the degree of permanent impairment suffered (with the degree of permanent impairment to be assessed in accordance with guidelines) rather than the existing Table of Disabilities,
 - (r) consequential amendments are made to the common law threshold to align current arrangements with the proposed use of guidelines (including adjustment of the threshold required to recover damages for economic loss or non-economic loss at common law so that a single threshold of 25% permanent impairment will apply),
 - (s) consequential amendments are made to the threshold for entitlement to lump sum pain and suffering compensation (specifically, provision for a 10% permanent impairment threshold),
 - (t) transitional provisions are enacted with existing claims to remain subject to current provisions and power for the regulations to progressively transfer claims to the new claims procedures,
 - (u) fine tuning of provisions for the notification and making of claims.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998* and other Acts set out in Schedules 1–6.

Schedule 1 makes the amendments referred to in paragraph (b) of the overview (concerning commutation to a lump sum of workers compensation liabilities) together with consequential amendments.

Schedule 2 makes the amendments referred to in paragraphs (c) and (d) of the Overview (concerning the provision of assistance and information and the establishment and funding of claims assistance advisory services. The Schedule also provides for the accreditation of injury management consultants by WorkCover and for WorkCover Guidelines to provide for their functions. Accredited injury management consultants will be competent but not compellable to give evidence.

Schedule 3 makes the amendments to provisions for lump sum statutory compensation for permanent injuries referred to in paragraph (q) of the Overview. Currently lump sum compensation is assessed pursuant to a Table of Disabilities based on a proportion of the maximum amount payable that is determined by reference to the percentage allocated to the loss in the Table. The amendments will provide for the payment of **permanent impairment compensation** based on the degree of permanent impairment that results from the injury (with the degree of permanent impairment assessed in accordance with WorkCover Guidelines). Consequential amendments are made to provisions for pain and suffering compensation and various other provisions to reflect the change to the way in which permanent impairment compensation is to be calculated.

The Schedule also makes other amendments that are consequential on the amendments made by Schedule 5 concerning new claims handling and dispute resolution procedures.

Schedule 4 makes the amendments referred to in paragraph (r) of the Overview. The Schedule amends provisions of the 1987 Act that restrict the recovery of common law damages for

non-economic loss. Existing monetary restrictions on common law recovery are replaced with equivalent restrictions that are based on assessment of the degree of permanent impairment resulting from an injury, to line up with the new arrangements for the calculation of lump sum permanent injury statutory compensation. No damages will be able to be awarded for non-economic loss or economic loss unless the degree of permanent impairment is greater than 25%. Provision is also made for the determination of disputes in common law recovery actions about the degree of permanent impairment to be referred to a medical assessor for binding determination.

Schedule 5 makes the other amendments referred to in the Overview.

Schedule 5.1 makes consequential amendments to provisions that deal with the effect of the recovery of damages on entitlements to statutory compensation. The amendments are consequential on the application of a fixed 25% threshold for recovery of both economic and non-economic loss damages. Schedule 5.1 also inserts transitional provisions for the Bill, including provisions for the transfer of existing claims (which will continue to be dealt with in accordance with existing claims procedure and compensation entitlement procedures) to new claims procedures and entitlements.

Schedule 5.2 [14] inserts new Chapter 7 into the 1998 Act, providing for new procedures for the making and determination of claims for statutory compensation and common law damages and disputes involving those claims.

Significant features of the new arrangements are as follows:

- (a) Division 1 of Part 2 simplifies procedures for the giving of notice of injury.
- (b) Division 2 of Part 2 simplifies procedures for the making of a claim for statutory compensation (with the introduction of significant flexibility by reference to WorkCover Guidelines) and extends some of these procedures to claims for (common law) work injury damages.
- (c) Division 1 of Part 3 imposes a duty on insurers to commence weekly payments of compensation (pursuant to provisional acceptance of liability) within 7 days after initial notification of injury.
- (d) Division 2 of Part 3 deals with claims for weekly payments and requires claims to be determined within 21 days. A claim is determined by accepting liability and commencing weekly payments or by disputing liability. Liability can be accepted provisionally for up to 12 weeks.
- (e) Division 3 of Part 3 deals with claims for medical expenses and requires a claim to be determined within 21 days by either accepting or disputing liability. Liability can be accepted provisionally for an amount of up to \$1,000.
- (f) Division 4 of Part 3 deals with claims for lump sum statutory compensation or work injury damages. A claim must be determined by accepting liability and making a reasonable offer of settlement or by disputing liability. A claim must be determined within 2 months after the claimant provides all relevant information or (if the injury has not stabilised within that time) within 1 month after it has stabilised.
- (g) Division 5 of Part 3 deals with the enforcement of claims determination provisions. The Division creates offences for failing to determine a claim within the required time or for referring a non-genuine dispute for the purposes of delay. Insurers can be required to pay an administration fee if they fail to determine a claim within the required time and the claim is referred for dispute determination.
- (h) Part 4 provides for the determination of disputes about claims for statutory compensation by a Workers Compensation Commissioner (rather than the Compensation Court, as at present). The Part imposes restrictions on when a dispute can be referred for determination.
- (i) Part 5 provides for the new Director of the Claims Assessment Service or a Commissioner to be able to give an interim payment direction to pay weekly compensation or medical

expenses compensation, pending the determination of any dispute about the compensation.

- (j) Part 6 provides for the assessment by the Commissioners of claims for (common law) work injury damages. The assessment of a claim is not a determination of the claim (except to the extent that liability is accepted by the insurer and the insurer accepts the amount of damages assessed). Claims assessment is a precondition to the commencement of court proceedings on the claim (unless the claim is exempt from assessment).
- (k) Part 7 deals with the appointment of medical assessors and the assessment by medical assessors of medical disputes. The assessment of degree of permanent impairment is required to be in accordance with certain guidelines. An assessment of a medical dispute is conclusive in respect of claims for statutory compensation, and conclusive as to degree of impairment, reasonableness of treatment and stabilisation of injury in respect of work injury damages claims.
- (l) Part 8 deals with legal costs in workers compensation matters. The Part simplifies and expands existing provisions and extends costs fixing powers to costs in court proceedings on work injury damages claims. The regulations can provide for the assessment and taxation of costs. Division 4 makes special provisions for costs disincentives in a case where court proceedings on a work injury damages claim fail to exceed the amount of damages assessed by a Commissioner on an assessment of a claim.
- (m) Part 9 deals with proceedings before Commissioners. Decisions and assessments of Commissioners are final, subject to the review of a Commissioner's decision by the Principal Commissioner on the basis that the decision was incorrect in a material respect. Provision is also made for the referral of a question of law or stated case on a question of law to the Compensation Court.
- (n) Part 10 deals with administrative matters, including the establishment of the Workers Compensation Claims Assessment Services (comprising the Director, the Commissioners, the medical assessors and the staff of the Service), the appointment of Commissioners and the issuing of WorkCover Guidelines.

Schedule 5.2 [1]–[13] make consequential amendments.

Schedule 5.3 makes consequential amendments to the *Compensation Court Act 1984*.

Schedule 5.4 makes consequential amendments to the *Defamation Act 1974*.

Schedule 6 makes consequential amendments to the 1987 and 1998 Acts.