

## Workers Compensation Legislation Amendment Bill 2003

### 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 1987 Act**), the *Workplace Injury Management and Workers Compensation Act 1998* (**the 1998 Act**) and various other Acts to provide for the following:

- (a) A provision (section 871 (2)) of the 1987 Act that allows a lump sum commutation payment to be paid to the Public Guardian for the benefit of the worker in certain cases will be omitted. An existing provision of general application (section 85) that requires payment of compensation to the Public Trustee in certain cases will apply instead of the provision being omitted. (Schedule 1 [1])
- (b) A provision in the 1987 Act that delays the running of time for the purposes of the 3-year limitation period on the commencement of common law proceedings will be extended to provide that time does not run during the 2-month period that an insurer has to determine a claim by accepting or disputing liability. (Schedule 1 [2])
- (c) The President of the Commission will be authorised in cases of conflict of interest or apprehended bias to delegate to a Deputy President the President's functions with respect to references from Arbitrators on questions of law and the striking out of pre-filing statements in common law claims. (Schedules 1 [3] and 2 [8])
- (d) Provision that permits employers to exit the managed fund scheme by becoming self-insurers on payment of an appropriate amount to the insurer who will become responsible for their managed fund liabilities will be amended to clarify the power of the WorkCover Authority to determine the amount of the payment as a fair and reasonable amount, rather than as the amount of an unspent premium. (Schedule 1 [4])
- (e) Provision for the payment of workers compensation claims excess will be amended to provide that an excess amount may be prescribed by the regulations to vary according to the time within which the employer notifies the employer's insurer of a workplace injury. (Schedule 2 [1])
- (f) A power in the 1998 Act to make regulations regulating advertising by lawyers and agents with respect to workers compensation will be updated to apply also to advertising with respect to common law claims. (Schedule 2 [2])
- (g) Provisions that confer powers on authorised officers to enter and inspect premises and to obtain information, documents and evidence will be rationalised for consistency. Non-compliance with a requirement made under the power to obtain information, documents and evidence will be an offence and existing provisions that provide protection against selfincrimination will be extended to apply to such a requirement. The selfincrimination provisions will also be modified to allow a warning about self-incrimination to be given at the appropriate time. A similar modification is also made to parallel self-incrimination provisions in the *Occupational Health and Safety Act 2000*. (Schedules 2 [3]–[6] and 3 [2] and [3])
- (h) An obsolete cross-reference in the 1998 Act to a repealed provision of the 1987 Act will be removed. (Schedule 2 [7])
- (i) Provision in the 1998 Act relating to control and direction of members of the Commission will be relocated. (Schedule 2 [9] and [10])
- (j) Specific provision will be made for the Department Head of the Department in which public service staff of the Commission are employed to be able to delegate any functions with respect to those staff to the Registrar of the Commission. (Schedule 2 [11]–[13])
- (k) It will be made clear that the Registrar does not constitute the Commission (except when exercising functions as an Arbitrator). (Schedule 2 [14])
- (l) The *Occupational Health and Safety Act 2000* will be amended to provide that regulations under the Act that impose a duty can provide that a breach of the duty does not confer a civil right of action, or confer a defence to or otherwise affect a civil right of action. (Schedule 3 [1])
- (m) Provisions in the *Occupational Health and Safety Act 2000* for the notification of accidents and

- “non-disturbance occurrences” will be amended so that the provisions will refer to “incidents” and “serious incidents”. (Schedule 3 [4]–[17])
- (n) The *Workers’ Compensation (Dust Diseases) Act 1942* will be amended to transfer to the Act provisions currently contained in the regulations under the Act that make provision for the determination and recovery of amounts in connection with the liability of negligent third parties to reimburse the Workers’ Compensation (Dust Diseases) Board for compensation paid under the Act. Minor clarifying amendments are made, including an amendment that makes it clear that the final determination of proceedings includes final determination by judgment, verdict, award, settlement, agreement, dismissal, discontinuance or otherwise. Transitional provisions extend these amendments to pending matters except where proceedings have been commenced before the date of introduction of this Bill. A consequential amendment is made to the *Workers’ Compensation (Dust Diseases) Regulation 1998* to delete the redundant provisions. (Schedules 4 and 6)
  - (o) The *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* will be amended to update a cross-reference to new compensation commutation provisions of the 1987 Act. (Schedule 5)
  - (p) Consequential savings and transitional provisions are enacted. (Schedules 1 [5] and [6], 4 [9] and [10] and 5 [2] and [3])
  - (q) A superseded amendment is repealed. (Schedule 7)

#### 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 that gives effect to the amendments to the Acts and Regulation set out in the Schedules.

**Schedules 1–7** contain the amendments referred to in the Overview.