

## **Workers Compensation Legislation Amendment Bill 2006**

### **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 1987 Act**) to provide for common arrangements in relation to workers compensation insurance for employers who are members of groups of related entity employers (similar to pay-roll tax employer grouping),
- (b) to amend the 1987 Act to provide that the excess amount that an employer must repay to a workers compensation insurer after a weekly compensation claim is paid to an injured worker is to be specified in the insurance premiums order that applies to the policy under which the claim is paid,
- (c) to repeal uncommenced provisions of the *Workers Compensation Legislation Amendment Act 2002* relating to an earlier proposed scheme of assessing premiums for groups of related entity employers,
- (d) to amend the 1987 Act to enable savings and transitional regulations consequent on the enactment of the proposed Act to be made,
- (e) to amend the *Workplace Injury Management and Workers Compensation Act 1998* (**the 1998 Act**) to provide that an employer who is not required to obtain and maintain a workers compensation insurance policy, or be licensed as a self-insurer, under State workers compensation laws because the employer is licensed under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth must pay a similar contribution to the WorkCover Authority Fund as is currently paid by insurers and self-insurers.

#### 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 1987 Act set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the 1998 Act set out in Schedule 2.

**Clause 5** repeals the *Workers Compensation Legislation Amendment Act 2002* (which contains uncommenced provisions relating to an earlier proposed scheme of assessing premiums for groups of related entity employers) to give effect to the object referred to in paragraph (c) of the Overview.

**Clause 6** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

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

##### **Act 1987 No 70**

**Schedule 1 [7]** inserts proposed Division 2A (proposed sections 175D–175J) into Part 7 of the 1987 Act to give effect to the object referred to in paragraph (a) of the Overview.

Proposed section 175D provides that a **group** means a group constituted under Part 10A of the *Taxation Administration Act 1996* (that provides for grouping for the purposes of pay-roll tax), but does not include any member of the group in respect of whom a determination under proposed section 175E is in force. This proposed Division also will not apply to the following:

- (a) an employer who is a self-insurer,
- (b) the persons, groups of persons and bodies constituted as a primary group by virtue of section 106J of the *Taxation Administration Act 1996* (being government departments),
- (c) the members of a group where the total wages payable to workers employed by the members of the group do not exceed:
  - (i) \$600,000 per year, or
  - (ii) if some other amount is prescribed by the regulations—that other amount.

Regulations may also be made to exclude any class or classes of employers from the operation of the proposed Division or specified provisions of the proposed Division. Proposed section 175E provides that the WorkCover Authority may, by order in writing, determine that an employer who would, but for the determination, be a member of a group is not a member of the group. Proposed section 175F sets out which employers may be the subject of a determination under this proposed section. Such a determination may be revoked. If an employer in respect of whom such a determination was made becomes aware that the employer no longer is one to which proposed section 175F applies, the employer must, within 14 days, notify the Authority of that fact. Failure to do so will be an offence carrying a maximum penalty of 500 penalty units (currently \$55,000).

Proposed section 175F provides that an exclusion determination under proposed section 175E may only be made in respect of the following employers:

- (a) an employer who would, but for the determination, be a member of a group arising under section 106H of the *Taxation Administration Act 1996* (Primary groups arising from the use of common employees),
- (b) an employer who carries on a business as trustee of a trust and would, but for the determination, be a member of a group arising under section 106I of that Act (Primary groups of commonly controlled businesses),
- (c) an employer that is a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose, but only if the employer's business is not in direct competition with any for-profit organisation.

Proposed section 175G provides that the workers compensation insurance policy of each employer who is a member of a group must:

- (a) be obtained from or through the same scheme agent that provides workers compensation insurance policies to the other members of the group, and
- (b) have the same renewal date as those other policies.

An employer who contravenes the proposed section is guilty of an offence carrying a maximum penalty of 500 penalty units (currently \$55,000).

Proposed section 175H provides that if an employer who is a member of a group fails to pay an amount that the employer is required to pay under Part 7 (Insurance) of the 1987 Act (including any workers compensation insurance premium and any sum recoverable by the WorkCover Authority under Part 7 of the 1987 Act from the employer), every member of the group is liable jointly and severally to pay the amount. If 2 or more persons are jointly or severally liable to pay an amount, the person entitled to payment may recover the whole of the amount from them, or any of them, or any one of them. A person who pays an amount in accordance with the liability imposed by this proposed section has such rights of contribution or indemnity from the other person or persons as are just.

Proposed section 175I provides for the WorkCover Authority to keep a register of employers who are members of groups. An employer must notify the WorkCover Authority if the employer becomes a member of a group.

If a change occurs in the information provided to the WorkCover Authority in connection with such a notification, the employer must, within 14 days, notify the

Authority of that change. Failure to do so will be an offence carrying a maximum penalty of 500 penalty units (currently \$55,000).

Proposed section 175J provides for the inspection of records of employers by the WorkCover Authority. The WorkCover Authority may direct an employer to make available for inspection by the Authority, specified records in the possession of the employer.

**Schedule 1 [1]** makes a consequential amendment to section 3 (Definitions) of the 1987 Act to provide a definition of **group**.

**Schedule 1 [4] and [5]** make consequential amendment to section 175 (Employers evading payment of correct premiums) of the 1987 Act. **Schedule 1 [5]** also repeals a redundant provision of the 1987 Act that related to the uncommenced provisions of the *Workers Compensation Legislation Amendment Act 2002* referred to in paragraph (c) of the Overview.

**Schedule 1 [6]** makes a consequential amendment to section 175A (Recovery from directors of corporation evading payment of correct premium) of the 1987 Act.

**Schedule 1 [2]** replaces the definition of **prescribed excess amount** in section 160 (1) of the 1987 Act to give effect to the object referred to in paragraph (b) of the Overview. **Schedule 1 [3]** and **Schedule 2 [5]** make consequential amendments following on from that amendment.

**Schedule 1 [8]** repeals a redundant clause of Part 18E of Schedule 6 (Savings, transitional and other provisions) to the 1987 Act that related to the uncommenced provisions of the *Workers Compensation Legislation Amendment Act 2002* referred to in paragraph (c) of the Overview.

**Schedule 1 [9]** inserts savings and transitional provisions into Schedule 6 to the 1987 Act that relates to the commencement of proposed section 175G as outlined above.

**Schedule 1 [10]** amends Schedule 6 to the 1987 Act to enable savings and transitional regulations consequent on the enactment of the proposed Act to be made to give effect to the object referred to in paragraph (d) of the Overview.

## **Schedule 2 Amendment of Workplace Injury Management and Workers**

### **Compensation Act 1998 No 86**

**Schedule 2 [4]** inserts proposed section 39A into the 1998 Act to give effect to the object set out paragraph (e) of the Overview. Proposed section 39A provides that each Comcare employer (see definition below) must pay the contributions prescribed by the proposed section to the WorkCover Authority for payment into the WorkCover Authority Fund.

**Schedule 2 [1]** amends section 37 (Definitions) of the 1998 Act to provide a definition of **Comcare employer**. A **Comcare employer** means an employer who:

(a) is licensed under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth after a declaration of eligibility under that Part made on the basis that the employer is a corporation carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority, and

(b) would otherwise be required:

(i) to obtain and maintain in force a policy of insurance pursuant to section 155 of the 1987 Act, or

(ii) to be licensed as a self-insurer.

**Schedule 2 [2] and [3]** make consequential amendments following on from the amendments outlined above.

**Schedule 2 [6]** amends section 243 (Disclosure of information) of the 1998 Act to allow the WorkCover Authority to disclose any information obtained in connection with the administration or execution of the 1987 Act or the 1998 Act to the Chief Commissioner of State Revenue.