

WORKERS COMPENSATION (AMENDMENT) ACT 1989
No. 214

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Workers Compensation Act 1987 No. 70
4. Amendment of WorkCover Administration Act 1989 No. 120, sec. 19 (Payments into and from Fund)
5. Amendment of Workers Compensation (Benefits) Amendment Act 1989 No. 133

SCHEDULE 1 - AMENDMENTS RELATING TO JOURNEY CLAIMS

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WORKERS COMPENSATION (AMENDMENT) ACT 1989
No. 214

NEW SOUTH WALES



Act No. 214, 1989

An Act to amend the Workers Compensation Act 1987 and certain other Acts in relation to journey claims, the liability of insurers and for other purposes. [Assented to 21 December 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Workers Compensation (Amendment) Act 1989.

Commencement

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

Amendment of Workers Compensation Act 1987 No. 70

3. The Workers Compensation Act 1987 is amended as set out in Schedules 1 - 3.

Amendment of WorkCover Administration Act 1989 No. 120, sec. 19 (Payments into and from Fund)

4. The WorkCover Administration Act 1989 is amended by inserting after section 19 (2) the following subsection:

(3) The maximum amount payable from the WorkCover Authority Fund for the costs of operation of the Compensation Court is to be the amount determined by the Minister administering the Compensation Court Act 1984 after consultation with the Minister administering this Act.

Amendment of Workers Compensation (Benefits) Amendment Act 1989 No. 133

5. The Workers Compensation (Benefits) Amendment Act 1989 is amended by omitting Schedule 5 to that Act (Amendment of Workers Compensation Act 1987 relating to journeys).

SCHEDULE 1 - AMENDMENTS RELATING TO JOURNEY CLAIMS

(Sec. 3)

(1) Section 10 (**Journey claims**):

(a) After section 10 (1), insert:

(1A) Subsection (1) does not apply if the personal injury was caused, partly or wholly, by the fault of the worker.

SCHEDULE 1 - AMENDMENTS RELATING TO JOURNEY
CLAIMS - *continued*

(1B) A personal injury received by a worker is to be taken to have been caused by the fault of the worker if the worker was at the time under the influence of alcohol or other drug (within the meaning of the Traffic Act 1909), unless the alcohol or other drug did not contribute in any way to the injury or was not consumed or taken voluntarily.

(1C) If the risk of injury on a daily or other periodic journey to which this section applies, compared with the risk of injury on the worker's normal journey, is materially increased for a reason connected with the worker's employment (including the distance travelled, the time of day or night, the method of travel or the route of the journey), subsection (1) is not excluded merely because the injury was caused by the fault of the worker.

(1D) Subsection (1) does not apply if the personal injury resulted from the medical or other condition of the worker and the journey did not cause or contribute to the injury.

(b) Omit section 10 (4), insert instead:

(4) For the purposes of this section, a journey from a worker's place of abode commences at, and a journey to a worker's place of abode ends at, the boundary of the land on which the place of abode is situated.

(c) After section 10 (5), insert:

(5A) Nothing in this section prevents the payment of compensation for any personal injury which, apart from this section, is an injury within the meaning of this Act.

(d) Section 10 (6):

After the definition of "educational institution", insert:

"fault" includes:

- (a) negligence or other tort; and
- (b) any failure to take reasonable care for the worker's own safety;

SCHEDULE 1 - AMENDMENTS RELATING TO JOURNEY
CLAIMS - *continued*

(2) Schedule 6 (**Savings, transitional and other provisions**):

(a) Part 2, clause 2:

Omit "that section applies", insert instead "that section applied before the commencement of the amendments made to that section by Schedule 1 to the Workers Compensation (Amendment) Act 1989".

(b) Part 2, clause 2:

At the end of the clause, insert:

(2) In the case of a personal injury received by a worker after the commencement of section 10 of this Act and before the commencement of Schedule 1 to the Workers Compensation (Amendment) Act 1989 on a journey to which that section applied before the commencement of that Schedule, liability is to be determined in accordance with the provisions of section 10 as in force before the commencement of that Schedule.

SCHEDULE 2 - AMENDMENT RELATING TO INSURERS'
LIABILITY

(Sec. 3)

Section 208A:

After section 208, insert:

Obligations of insurer under policies unenforceable if insurer has insufficient funds in statutory fund

208A. (1) An insurer who is liable to make any payment under a policy of insurance issued or renewed by the insurer (whether before or after the commencement of this section) may postpone that payment while there is insufficient money to make the payment in the statutory fund maintained by the insurer in respect of that policy.

(2) A person who is not paid any amount to which the person is entitled because of the operation of any such

SCHEDULE 2 - AMENDMENTS RELATING TO INSURERS'
LIABILITY - *continued*

postponement may apply to the Authority for payment of that amount.

(3) The Authority is required to pay that amount to the applicant out of the Premiums Adjustment Fund unless the right of the insurer to postpone the payment has ceased.

(4) The insurer is required to reimburse the Authority for any such payment made by the Authority as soon as the relevant statutory fund of the insurer contains sufficient money to allow the insurer to do so.

(5) If the Authority is satisfied that any deficiency in the statutory fund of an insurer was caused (wholly or partly) by a failure of the insurer to comply with this Act or the regulations or by a breach of a director's duty under section 200, the Authority may require the insurer to reimburse the Authority from any of its funds (other than its statutory funds).

(6) If an amount that an insurer is required to reimburse the Authority is not paid by the date directed by the Authority:

- (a) the amount may be recovered by the Authority as a debt in a court of competent jurisdiction; and
- (b) the insurer is not entitled, while the amount remains unpaid, to withdraw management expenses referred to in section 197 (c) from any statutory fund of the insurer.

(7) Any amount reimbursed to the Authority under this section is to be paid into the Premiums Adjustment Fund.

**SCHEDULE 3 - AMENDMENTS RELATING TO BODILY
DISFIGUREMENT**

(Sec. 3)

(1) Section 65 (**Definitions**):

In section 65 (2) (b), after "severe facial disfigurement", insert "or severe bodily disfigurement".

(2) Section 72 (**Reference of matters to medical panel**):

In section 72 (2) and (3), after "severe facial disfigurement", wherever occurring, insert "or severe bodily disfigurement".

(3) Part 3, Division 4, Table (**Compensation for permanent injuries**):

(a) At the end of the matter relating to "Disfigurement", insert:

Severe bodily disfigurement (being an injury
which is not or is not wholly an injury
otherwise compensable under this Table) 0 - 22

(b) At the end of the Table, insert:

(h) Compensation is payable in respect of severe bodily disfigurement even though the injury which caused the disfigurement was received after the commencement of this Division and before the inclusion of that item in the Table.

[*Minister's second reading speech made in -
Legislative Assembly on 21 November 1989
Legislative Council on 6 December 1989*]

FIRST PRINT

WORKERS COMPENSATION (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to exclude a claim for workers compensation for injuries received by a worker on a journey between the worker's home and place of employment (and certain other journeys) if the injury was caused wholly or partly by the fault of the worker; and
 - (b) to exclude such journey claims if the injury occurred between the worker's dwelling and the boundary of the land or if the injury resulted from the medical or other condition of the worker; and
 - (c) to repeal amendments contained in the Workers Compensation (Benefits) Amendment Act 1989 (but not commenced) relating to journey claims; and
 - (d) to provide that a licensed insurer is not required to pay workers compensation claims if there are insufficient funds in the relevant statutory premiums fund of the insurer to meet the claim - in any such case payment by the insurer is postponed and interim payments are to be made by the WorkCover Authority from the Premiums Adjustment Fund; and
 - (e) to enable lump sum compensation to be paid for severe bodily disfigurement in addition to severe facial disfigurement; and
 - (f) to provide that the maximum amount to be paid from the WorkCover Authority Fund to meet the costs of the Compensation Court is to be determined by the Attorney General after consultation with the Minister for Industrial Relations; and
 - (g) to make other consequential amendments.
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Workers Compensation (Amendment) 1989

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Workers Compensation Act 1987.

Clause 4 amends the WorkCover Administration Act 1989 to give effect to the object referred to in paragraph (f).

Clause 5 repeals the amendments to be made by the Workers Compensation (Benefits) Amendment Act 1989 referred to in paragraph (c).

Schedule 1 contains the amendments to the Workers Compensation Act 1987 to give effect to the objects referred to in paragraphs (a) and (b).

Schedule 2 contains an amendment to the Workers Compensation Act 1987 to give effect to the object referred to in paragraph (d).

Schedule 3 contains the amendments to the Workers Compensation Act 1987 to give effect to the object referred to in paragraph (e).

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NEW SOUTH WALES



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WORKERS COMPENSATION (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

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The Legislature of New South Wales enacts:

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3. The Workers Compensation Act 1987 is amended as set out in Schedules 1 - 3.

Amendment of WorkCover Administration Act 1989 No. 120, sec. 19 (Payments into and from Fund)

4. The WorkCover Administration Act 1989 is amended by inserting after section 19 (2) the following subsection:

(3) The maximum amount payable from the WorkCover Authority Fund for the costs of operation of the Compensation Court is to be the amount determined by the Minister administering the Compensation Court Act 1984 after consultation with the Minister administering this Act.

Amendment of Workers Compensation (Benefits) Amendment Act 1989 No. 133

5. The Workers Compensation (Benefits) Amendment Act 1989 is amended by omitting Schedule 5 to that Act (Amendment of Workers Compensation Act 1987 relating to journeys).

SCHEDULE 1 - AMENDMENTS RELATING TO JOURNEY CLAIMS

(Sec. 3)

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(1A) Subsection (1) does not apply if the personal injury was caused, partly or wholly, by the fault of the worker.

SCHEDULE 1 - AMENDMENTS RELATING TO JOURNEY
CLAIMS - *continued*

(1B) A personal injury received by a worker is to be taken to have been caused by the fault of the worker if the worker was at the time under the influence of alcohol or other drug (within the meaning of the Traffic Act 1909), unless the alcohol or other drug did not contribute in any way to the injury or was not consumed or taken voluntarily.

(1C) If the risk of injury on a daily or other periodic journey to which this section applies, compared with the risk of injury on the worker's normal journey, is materially increased for a reason connected with the worker's employment (including the distance travelled, the time of day or night, the method of travel or the route of the journey), subsection (1) is not excluded merely because the injury was caused by the fault of the worker.

(1D) Subsection (1) does not apply if the personal injury resulted from the medical or other condition of the worker and the journey did not cause or contribute to the injury.

(b) Omit section 10 (4), insert instead:

(4) For the purposes of this section, a journey from a worker's place of abode commences at, and a journey to a worker's place of abode ends at, the boundary of the land on which the place of abode is situated.

(c) After section 10 (5), insert:

(5A) Nothing in this section prevents the payment of compensation for any personal injury which, apart from this section, is an injury within the meaning of this Act.

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"**fault**" includes:

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(2) Schedule 6 (**Savings, transitional and other provisions**):

(a) Part 2, clause 2:

Omit "that section applies", insert instead "that section applied before the commencement of the amendments made to that section by Schedule 1 to the Workers Compensation (Amendment) Act 1989".

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At the end of the clause, insert:

(2) In the case of a personal injury received by a worker after the commencement of section 10 of this Act and before the commencement of Schedule 1 to the Workers Compensation (Amendment) Act 1989 on a journey to which that section applied before the commencement of that Schedule, liability is to be determined in accordance with the provisions of section 10 as in force before the commencement of that Schedule.

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Section 208A:

After section 208, insert:

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(2) A person who is not paid any amount to which the person is entitled because of the operation of any such

SCHEDULE 2 - AMENDMENTS RELATING TO INSURERS'
LIABILITY - *continued*

postponement may apply to the Authority for payment of that amount.

(3) The Authority is required to pay that amount to the applicant out of the Premiums Adjustment Fund unless the right of the insurer to postpone the payment has ceased.

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