



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

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 *Occupational Health and Safety Act 1983*, the *Construction Safety Act 1912*, the *Dangerous Goods Act 1975* and certain other Acts to make the changes listed below.

The *Workers Compensation Act 1987* is amended as follows:

- (a) to limit payment of workers compensation to claims where work is a substantial contributing factor,
 - (b) to remove fault restrictions on workers compensation coverage on journeys to and from work,
 - (c) to provide for the discontinuation of weekly payments after 2 years where the worker is not seeking suitable employment,
 - (d) to reduce maximum lump sum benefits by 25%,
-

- (e) to exclude pre-existing disabilities from the assessment of lump sum compensation for permanent injuries (by extending an existing provision that currently applies only to back, neck and pelvis injury),
- (f) to establish new arrangements for conciliation of disputes about compensation, including arrangements for compulsory conciliation before court proceedings can be commenced,
- (g) to provide that the reports and certificates of medical panels are prima facie evidence as to the worker's condition and to impose limitations on the admission of other evidence about a worker's condition where a medical panel report or certificate has been admitted,
- (h) to authorise the making of regulations to regulate advertising of services provided by lawyers and agents in relation to workers compensation claims,
- (i) to change the workers compensation claims excess payable by the employer from \$500 to 2 weeks compensation,
- (j) to authorise court rules and regulations about disclosure of medical evidence to include provision to exclude medical evidence not disclosed in accordance with the rules or regulations,
- (k) to transfer to the Public Trustee certain functions of the WorkCover Authority concerning administration of compensation payments made in respect of deceased workers,
- (l) to make minor amendments to procedural matters affecting the making of a claim,
- (m) to include as deemed workers covered by the Act participants in workplace based training schemes prescribed by the regulations,
- (n) to increase the penalty for a failure to keep a register of workplace injuries as required by the Act,
- (o) to provide for the banning of cost recovery by legal practitioners who are directors of or who have a financial interest in a compensation claims agent who has persistently engaged in prohibited claims touting activities, and to make other minor and clarifying amendments to claims touting provisions,
- (p) to make general insurers and insurance brokers liable for misleading representations that induce employers to believe that comprehensive business insurance packages include or do not require workers compensation insurance,

- (q) to enable rules of the Compensation Court or the regulations to require an application commencing proceedings in the Compensation Court to be accompanied by evidence that certain requirements imposed by various provisions of the Act as to when proceedings can be commenced have been complied with,
- (r) to bring the provision of the Act that sets the rate of interest to be paid on common law workers compensation damages into line with the equivalent provision of the *Motor Accidents Act 1988*,
- (s) to disapply for the period between 78 weeks after injury and the payment of compensation for 104 weeks provisions of the Act applying in relation to coal miners that limit the rates of weekly payments of compensation for incapacity for work to the rates applicable under the former Act (before the commencement of the current Act),
- (t) to insert a regulation-making power to enable any of the amendments to be made by this Bill to be modified or disapplied in their application to coal miners,
- (u) to repeal a provision that imposes 5% further thresholds on hearing loss claims (in addition to the initial 6% loss threshold),
- (v) to make minor miscellaneous and clarifying amendments to certain provisions,
- (w) to make consequential amendments including to enact savings and transitional provisions.

Amendments to other Acts:

- (a) the *Compensation Court Act 1984* is amended to require consultation with employer and employee organisations on the appointment of medical referees for the purposes of the *Workers Compensation Act 1987*,
- (b) the *Construction Safety Act 1912* is amended to authorise the suspension of a powderman's certificate of competency on the ground of a person's history of violence or threats of violence, and to authorise the refusal of such a certificate on that ground or on the ground of there being an apprehended violence order in force against the person,
- (c) the *Dangerous Goods Act 1975* is amended to authorise the refusal or suspension of various explosives licences and permits on the ground of a person's history of violence or threats of violence or the existence of an apprehended violence order against the person,

- (d) the *Industrial Relations Act 1996* is amended to provide a right of appeal to a Full Bench of the Industrial Relations Commission against the acquittal of a person for an alleged offence against occupational health and safety legislation,
- (e) the *Occupational Health and Safety Act 1983* is amended as follows:
 - to give inspectors under that Act power to require persons to provide information, documents and evidence about contraventions of the Act and certain related Acts,
 - to change the requirements under that Act that prevent places and things involved in a dangerous workplace occurrence being moved or interfered with until midnight on the first working day after the day on which the occurrence was notified, so that the requirements will apply only until midnight on the next day (whether or not that day is a working day),
 - to remove the automatic stay that applies to a prohibition notice issued under that Act (a notice prohibiting activities that carry an immediate risk to health or safety) when a review of the notice is applied for and instead provide for an application for a stay to be made to an Industrial Magistrate,
- (f) the *WorkCover Administration Act 1989* is amended to provide for the payment out of the WorkCover Authority Fund of the costs associated with conciliation officers under the *Workers Compensation Act 1987*,
- (g) the *WorkCover Legislation Amendment Act 1995* is amended to delete the following uncommenced amendments:
 - an amendment to the *Workers Compensation Act 1987* that would impose a 3-year limit on weekly payments of workers compensation on stress claims,
 - an amendment to the *Workers Compensation Act 1987* that would entitle a party to a conciliation conference to legal representation,
 - an amendment to the *Workers Compensation Act 1987* that would enable an employer to require the employer's workers compensation insurer to defend a workers compensation claim made against the employer,
 - an amendment to the *Compensation Court Act 1984* that will be overtaken by the amendments to that Act referred to above,

- (h) the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* is amended to provide for the payment of workers compensation to emergency service workers and rescue association workers for damage, destruction or loss of personal property on their person, and vehicles, equipment and things in their possession while carrying out an authorised activity, and personal property and vehicles while on a journey to or from an authorised activity,
- (i) the *Workers' Compensation (Dust Diseases) Act 1942* is amended to close the Dust Diseases Reserve Fund under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

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

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

Clause 4 is a formal provision that gives effect to the Schedule of amendments to other Acts.

Schedule 1 Amendment of Workers Compensation Act 1987

New conciliation arrangements

Schedule 1.1 makes amendments that provide new conciliation arrangements for the conciliation of disputes involving lump sum workers compensation, weekly payments of compensation and compensation for hospital, medical and other expenses. The new provisions apply to claims made after the commencement of the amendments, subject to the regulations which can change which claims the new provisions apply to and subject in the case of hospital, medical and other expenses to the phasing in of the new arrangements by regulation. The existing conciliation provisions of the Act continue to apply to claims pending at the commencement of the new provisions. Some features of the new conciliation scheme are as follows:

- The main feature of the new scheme is that court proceedings will not be able to be commenced until a dispute has been referred for conciliation. The dispute will then be screened for conciliation

purposes and can be fast-tracked to the Compensation Court. A worker will not be able to refer a dispute for conciliation until a certain period has elapsed after the making of the claim (to allow a reasonable time for the assessment of the claim) unless the worker is notified that the claim is disputed. The current arrangements for weekly compensation (under section 102, 103A and 106D) put the onus on the employer/insurer to refer disputes about weekly payments of compensation to conciliation. The current provisions for lump sum compensation (under section 106E) do not require a dispute to go to conciliation before court proceedings can be commenced and instead provide for a delay of 12 weeks after the claim is made or (in some cases) until a medical panel reports on the matter. The current provisions for hospital, medical and other expenses compensation requires only that a dispute has arisen about the compensation before court proceedings can be commenced.

- Provision is made for the appointment of new conciliation officers from the Department of Industrial Relations (currently conciliation officers are appointed from the WorkCover Authority), and a Principal Conciliator to have (with respect to new claims) the role of the Senior Conciliation Officer.
- Different provisions will apply to legal representation before conciliation officers (so that there will be a right to representation by a legal practitioner or agent at conciliation conferences).

A number of ancillary amendments are made to increase the effectiveness of conciliation arrangements, including an amendment to section 119 to require the court to have particular regard to an unreasonable failure to participate in conciliation in assessing costs penalties.

Employment required to be substantial contributing factor

Schedule 1.2 makes amendments to limit the payment of compensation under the Act to those situations where employment is a substantial contributing factor to the injury concerned. At present there is no requirement that employment be a contributing factor to an injury, only that the injury should have arisen out of or in the course of employment. In the case of an injury consisting of a disease or the aggravation, acceleration, exacerbation or deterioration of a disease, there is currently a requirement that employment be a contributing factor (but not a substantial contributing factor). The new requirement will not apply to injuries covered by existing special provisions for journey claims, recess claims and claims by trade union representatives. A

list of examples of matters to be taken into account for the purpose of determining whether employment is a substantial contributing factor is inserted. Consequential amendments are made to a section dealing with psychological injuries that currently requires employment to be a substantial cause of such an injury before compensation is payable and to various other provisions.

Journey claims

Schedule 1.3 makes amendments to the provisions that entitles a worker to compensation if the worker is injured on a journey to or from work so as to remove the exception that disentitles a worker to compensation if the injury is due to the fault of the worker and replace it with an exception that disentitles a worker to compensation if the injury is attributable to the serious and wilful misconduct of the worker. The new exception differs from a similar existing exception in section 14 that will continue to apply in all cases (not just journey injuries). The section 14 exception is more difficult to establish because it requires proof that the injury is solely attributable to the serious and wilful misconduct of the worker and does not apply where death or serious and permanent disablement results.

Reduction in maximum lump sum compensation amounts

Schedule 1.4 makes amendments that will reduce by approximately 25% the maximum lump sum benefits payable under the Act for permanent injuries and consequent pain and suffering. Under the amendments, the maximum amount payable for permanent injury will be reduced from \$132,300 to \$100,000, the maximum amount payable for 2 or more permanent injuries will be reduced from \$160,950 to \$121,000 and the maximum amount payable for pain and suffering resulting from a permanent injury will be reduced from \$66,200 to \$50,000.

Discontinuation of weekly payments after 2 years

Schedule 1.5 makes amendments to provide that weekly payments of compensation for partial incapacity or temporary permanent incapacity for work are to cease after 104 weeks of payments if the worker is not seeking suitable employment or not taking other reasonable return-to-work steps. The provision will require the worker to be given at least 12 weeks notice of proposed discontinuation of payments and to be told of the action necessary to prevent discontinuation.

Deduction for previous injuries and pre-existing conditions and abnormalities

Schedule 1.6 contains amendments to broaden the application of a provision introduced in 1995 that requires lump sum compensation payment for permanent loss to be reduced by the proportion of the loss that is attributable to previous injuries or pre-existing conditions or abnormalities. The provision currently applies only to permanent impairment of the back, neck or pelvis. The amendment will expand the provision so that it applies to all injuries for which lump sum compensation is payable. The result will be that the employer will only be liable for the part of a worker's permanent disability actually caused by the work injury. The intention is to minimise possible reluctance by employers to employ or re-employ workers with prior disabilities because of concern about being held liable for the pre-existing condition. To avoid litigation seeking to determine the precise percentage of pre-existing disability the amendments provide that where it is clear that the worker did have some pre-existing disability but there is an absence of medical evidence to ascertain the percentage, 10% of the worker's overall disability (of the bodily part or function affected) may be taken by the insurer assessing the claim or, in case of a dispute, by a conciliator or the Compensation Court as the proportion to be deducted for that purpose. The new provision will also subsume the function of section 71 of the Act, deleted by the amendments, which dealt with occupational diseases such as loss of hearing due to industrial noise and required prior losses suffered by the worker, for which compensation was already paid or payable, to be deducted from any claim for further loss.

Evidentiary value of medical panel reports and certificates

Schedule 1.7 contains amendments to provide that certificates and reports of medical panels under the Act are prima facie evidence as to a worker's condition in proceedings in the Compensation Court (to the extent that they are not already conclusive evidence under existing provisions) and that further evidence cannot be admitted on the matters of which they are evidence except with the leave of the Court given in the special circumstances of the case. A further amendment is made to enable the Court to order that costs associated with an unsuccessful attempt to admit further evidence about matters on which a medical panel or report is evidence in the proceedings are to be treated as unreasonably incurred if not reasonably justified (with the result that those costs cannot be recovered from another party or by the solicitor for the party on whose behalf they were incurred). A transitional provision is inserted to make it clear that the amendments apply to medical certificates and reports given after the commencement of the amendments whenever the injury occurred, but not to court proceedings pending or already determined.

Claims excess payable by employers

Schedule 1.8 makes an amendment that will change the workers compensation claim excess payable by an employer in respect of each weekly compensation claim against the employer from \$500 (as at present) to an amount equal to the first 2 weeks of compensation paid on the claim.

Marketing of legal and agency services

Schedule 1.9 inserts a new provision (and makes consequential transitional amendments) to give the WorkCover Authority power to prevent a solicitor, solicitor corporation or firm of solicitors from being able to recover fees, costs and charges in workers compensation matters if the solicitor, a member of the firm or a voting shareholder of the solicitor corporation is a director of or has a financial interest in a workers compensation claims agent and the agent or a director or manager of the agent has persistently engaged in certain prohibited conduct (such as touting) with respect to claims. The new provision is an extension of an existing provision that enables WorkCover to prevent the agent in such a case from being able to recover its fees, costs and charges.

A regulation-making power is also inserted to enable the making of regulations to control marketing (including advertising) of legal services and claims agent services that are provided in connection with claims for workers compensation.

A minor amendment is made to include a claim for the cost of provision of a hearing aid as one of the claims (a protected claim) to which the Division about prohibited conduct relating to touting for claims applies.

A further minor amendment inserts a provision to make it clear that the Division applies to conduct regarding prospective claims, whether or not a claim is ever actually made.

Transfer of WorkCover Authority functions to Public Trustee

Schedule 1.10 makes amendments that will transfer to the Public Trustee the functions of the WorkCover Authority with respect to the apportionment of compensation payments between dependants of a deceased worker and with respect to the investment and administration of compensation payable on the death of a worker, compensation payable to a person who is mentally ill or under the age of 18, and certain lump sum commutation payments.

Rules and regulations with respect to medical evidence

Schedule 1.11 makes an amendment that will expand an existing power to make rules of court and regulations with respect to the disclosure of medical reports to medical referees and medical panels so that the rules or regulations can provide for the exclusion of any report that is not disclosed as required.

Making a claim for compensation

Schedule 1.12 makes amendments to clarify an existing provision by providing that an insurer or self-insurer can accept a claim for compensation made more than 6 months after the injury, accident or death concerned without the need to obtain the approval of the Authority but that the approval of the Authority is required to authorise the acceptance of a claim made more than 3 years after the injury, accident or death. Another amendment makes it clear that the claim form prescribed or approved under the Act can include an authority that authorises a provider of medical, hospital or rehabilitation services to release information relevant to the claim.

Workplace based training programs—deemed employment

Schedule 1.13 makes an amendment to provide that participants in a Commonwealth funded workplace training program prescribed by the regulations are taken to be workers employed by the person who provides the workplace based training concerned. The regulations can also declare specified payments made under the training program to be the wages, for the purposes of calculating workers compensation insurance premiums, of the participants in the scheme.

Penalty increase—requirement to keep register of injuries

Schedule 1.14 makes an amendment to increase from 20 penalty units (\$2,000) to 50 penalty units (\$5,000) the penalty for a failure by an employer to keep the register of injuries required by section 90 to be kept at factories, workshops, shops, offices, mines and quarries.

Misleading conduct by insurers and brokers

Schedule 1.15 inserts a new provision that deals with conduct by insurers and insurance brokers whereby insurance packages that are marketed as comprehensive for business do not provide workers compensation insurance cover and do not contain a warning about this or that workers compensation insurance is compulsory for employers. The new provision makes such conduct an offence and also provides a mechanism whereby culpable insurers and brokers can be joined as co-defendants and made liable in proceedings for recovery against employers based on a failure to have workers compensation insurance when the conduct of the insurer or broker caused or significantly contributed to the failure to insure.

Compliance with provisions that restrict commencement of proceedings

Schedule 1.16 amends provisions inserted in the Act by the *WorkCover Legislation Amendment Act 1995*. Those provisions prevent certain proceedings being commenced or entertained in the Compensation Court unless certain preconditions have been met (generally that a dispute has arisen and a specified period has elapsed since the dispute arose). The amendments will enable rules of the Compensation Court or regulations to be made that require an application commencing proceedings in the Court of the kind that are subject to the preconditions to be accompanied by evidence (in the form of a certificate or other information required by the rules or regulations) that the preconditions have been met, and preventing the lodgment of an application that is not accompanied by the required evidence.

Rate of interest on common law damages

Schedule 1.17 amends the provision that deals with the rate of interest payable on awards of damages in common law workers compensation matters. The amendment removes an obsolete cross-reference to the rate of interest applicable under rules of the Supreme Court and replaces it with a reference to the rate set under the provision of the *Supreme Court Act 1970* that provides for the payment of interest on Supreme Court judgment debts. The rate for workers compensation common law damages is set at three-quarters of that Supreme Court rate. The amendment brings the provision into line with the equivalent provision of the *Motor Accidents Act 1988*.

Special provisions for coal miners

Schedule 1.18 amends the special transitional provisions that apply to coal miners. Under those provisions, a coal miner who is partially incapacitated but not provided with suitable duties is entitled to benefits at the total incapacity level (*deemed total incapacity*) with no limit as to how long the entitlement can continue (until retirement). In the same circumstances, other workers are entitled to a maximum 104 weeks deemed total incapacity compensation. The rates of total incapacity benefit and deemed total incapacity benefit for coal miners remained however at the lower scale of indexed rate applicable under the former Act. In practice coal miners' accident pay entitlements top up these rates to the higher levels applicable to other workers, but only for the first 78 weeks after injury. The purpose of the amendment is to apply to coal miners the higher rates of total incapacity

benefit and deemed total incapacity benefits applicable to other workers, but only during the period between 78 weeks after injury (ie the time at which accident pay top-up cuts out) and payment of compensation for 104 weeks (the maximum period of deemed total incapacity entitlement for other workers). The amendment applies only to a period of incapacity that occurs after the amendment commences and results from an injury received after the commencement of the *Workers Compensation Act 1987*.

The amendments also insert a regulation-making power to enable the regulations to modify or disapply any of the amendments made by this Bill (except the top-up compensation amendments referred to above and the journey claim amendments) in their application to coal miners.

Hearing loss claims

Schedule 1.19 makes amendments to sections 69A and 69B to remove the 5% further loss threshold for hearing loss claims, as inserted by the *WorkCover Legislation Amendment Act 1995*. The effect of the 5% further loss threshold is that having passed the initial 6% hearing loss threshold to be entitled to compensation for hearing loss a worker would be prevented from claiming for further hearing loss except in increments of loss of at least 5%. A transitional provision is inserted to provide that the amendments are taken to have commenced on the commencement of sections 69A and 69B.

Clarifications and miscellaneous amendments

Schedule 1.20 makes the following miscellaneous amendments to the Act:

- (a) Amendment [1] enables the making of regulations to require an insurer to give a copy of a notice disputing liability in respect of a claim to the claimant's employer.
- (b) Amendments [2]–[5] make minor clarifying changes to provisions dealing with regulations fixing maximum legal costs.
- (c) Amendment [6] makes it clear that an existing provision that imposes controls on the recovery of solicitor/client costs applies to costs incurred in respect of a prospective claim (whether or not a claim is ever actually made).
- (d) Amendment [7] makes it clear that the regulations relating to return-to-work plans for workers can create offences with respect to failures to comply with return-to-work plans.

- (e) Amendment [8] makes it clear that an employer who fails to provide certain information (such as the employer's name and address) at the request of a worker is guilty of an offence whether or not the employer actually refuses to provide the information.
- (f) Amendment [9] amends a transitional provision inserted in 1995 to make it clear that a reference in the provision to "commencement" is a reference to the commencement of the provision to which the transitional provision applies.
- (g) Amendment [10] deals with provisions inserted by the *WorkCover Legislation Amendment Act 1995* that prevent certain proceedings being commenced or entertained in the Compensation Court unless certain preconditions have been met (generally that a dispute has arisen and a specified period has elapsed since the dispute arose). The amendment inserts a transitional provision that makes it clear that those provisions extend to apply in respect of an injury received before the commencement of the provisions, but do not apply in respect of court proceedings pending or determined as at that commencement.
- (h) Amendment [11] adds the name of this amending Act to the list of Acts in respect of which consequential savings and transitional regulations can be made.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Compensation Court Act 1984* to require the Chief Judge of the Compensation Court to consult with employer and employee organisations on proposed appointments of medical referees by the Chief Judge. A consequential amendment is made to the *WorkCover Legislation Amendment Act 1995* to delete amendments to the *Compensation Court Act 1984* that provided for the appointment as medical referees of persons nominated by employer and employee organisations.

Schedule 2.2 amends the *Construction Safety Act 1912* to broaden existing provisions that allow the refusal or suspension of a powderman's certificate of competency on the ground that the holder is the subject of an apprehended violence order, so that such a certificate will be able to be refused or suspended on the ground that the person has a history of violence or threats of violence (including stalking and intimidation). The power to suspend on that ground will only be able to be used when the person has been called upon to show cause why the certificate should not be suspended or cancelled (which carries with it mechanisms for the person to be heard by the Authority and to appeal if dissatisfied with the decision). Further amendments are made to provide that an application for a powderman's certificate can be refused on those grounds also.

Schedule 2.3 amends the *Dangerous Goods Act 1975* to insert a new provision that authorises the WorkCover Authority to cancel or refuse to issue certain explosives licences and permits under the Act on the ground that the person cannot be trusted to deal with explosives because the person has a history of violence or threats of violence (including stalking and intimidation). The provision for cancellation requires the person to be given an opportunity to make submissions on the matter and WorkCover is authorised to suspend the licence or permit pending the making of submissions and the determination of the matter. The provision also authorises the refusal or suspension of an explosives licence or permit while a person is the subject of an apprehended violence order. The provision parallels an existing provision in the *Construction Safety Act 1912* that confers similar powers of suspension and cancellation in respect of powdermen's certificates of competency (which is also being amended by this Bill to allow suspension and cancellation on the grounds of a person's history of violence or threats of violence).

Schedule 2.4 amends the *Industrial Relations Act 1996* to provide a right of appeal to a Full Bench of the Industrial Relations Commission against a decision by a judicial member of that Commission or an Industrial or other Magistrate to acquit a person for an alleged offence against the *Occupational Health and Safety Act 1983* or certain associated occupational health and safety legislation. Any such appeal:

- (a) may be made by the Attorney General, Minister for Industrial Relations, DPP or the prosecutor, and
- (b) must be made within 21 days after the date of the decision appealed against or, with the leave of the Full Bench, within 3 months of that decision, and
- (c) is not to be by way of a new hearing, and
- (d) may be made if proceedings for the offence were originally instituted by an inspector under that legislation or with the consent of the Minister or other authorised officer (but may not be made if the proceedings were instituted by the secretary of an industrial organisation without any such consent).

The amendment overcomes the decision of the Court of Criminal Appeal in *CI&D Manufacturing Pty Ltd & Ors v The Registrar Industrial Court of New South Wales & Ors* given on 16 August 1996, which held that the common law rule against double jeopardy was not abrogated by rights of appeal, expressed in general terms, under the now repealed *Industrial Relations Act 1991*. The decision in that case applies to appeals under the *Industrial Relations Act 1996*.

Schedule 2.5 amends the *Occupational Health and Safety Act 1983* as follows:

- (a) Amendment [1] changes a provision that prohibits plant and areas of premises involved in dangerous occurrences from being used, moved, interfered with or disturbed. The prohibition currently applies until midnight on the following **working** day. The amendment changes this to midnight on the next day (whether or not the next day is a working day).
- (b) Amendments [2]–[4] insert special provisions that will authorise occupational health and safety inspectors to require a person who is believed to have information, documents or evidence about a possible contravention of the relevant legislation to give the information, documents or evidence to the inspector. The provisions contain protections against self incrimination.
- (c) Amendments [5] and [6] change the provision that provides for an automatic stay of a prohibition notice (a notice prohibiting certain workplace activities that carry an immediate risk to health or safety) when a review of the notice is applied for. The amendment removes the automatic stay and replaces it with a right to apply to a Local Court constituted by an Industrial Magistrate for an order staying the prohibition notice. A court ordered stay cannot extend past the time when notice of the result of the review of the prohibition notice is given to the applicant by the WorkCover Authority.

Schedule 2.6 amends the *WorkCover Legislation Amendment Act 1995* as follows:

- (a) Amendment [1] repeals an uncommenced amendment to the *Workers Compensation Act 1987* that would operate to impose a 3 year limit on weekly payments of compensation under that Act for psychological (stress) injuries.
- (b) Amendment [2] repeals uncommenced amendments to the *Workers Compensation Act 1987* that would operate to entitle a party to a dispute to be represented by a barrister or solicitor at a conciliation conference.
- (c) Amendments [3] and [4] repeal uncommenced amendments to the *Compensation Court Act 1984* that provided for the nomination of medical practitioners by employer and employee organisations and the Department of Health for appointment as medical referees, and equal representation on medical panels by employer and employee nominees. A further amendment is made to the Act in this Schedule to require the Chief Judge of the Compensation Court to consult with employer and employee organisations on proposed appointments of medical referees.

Schedule 2.7 amends the *WorkCover Administration Act 1989* to provide for payment out of the WorkCover Authority Fund of the costs incurred by the Department of Industrial Relations in relation to workers compensation conciliation officers who are officers of that Department and to transfer to that Act a provision currently in the *Workers Compensation Act 1987* that provides for payment out of the WorkCover Authority Fund of the remuneration of conciliation officers who are appointed by the Governor.

Schedule 2.8 amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to provide for the payment of compensation to an emergency service worker or rescue association worker in the following circumstances:

- (a) destruction, damage or loss of personal effects on the worker while carrying out an authorised activity,
- (b) destruction, damage or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the authorised activity and owned by or in the possession or custody of the worker,
- (c) destruction, damage or loss of any vehicle used to transport the worker to or from the scene of an authorised activity and owned by or in the possession or custody of the worker.

The Act already provides for this kind of compensation to be payable to bushfire fighters and the new provisions generally follow the provisions for fire fighters.

The Act also already provides for the payment of compensation to emergency service workers and rescue association workers for damage to crutches, artificial aids, spectacles and clothing.

The Act is also amended to prevent a motor vehicle insurer from increasing an insurance premium because a vehicle was damaged in circumstances in which compensation is payable. This provision parallels an equivalent provision applicable to bushfire fighters.

Schedule 2.9 amends the *Workers' Compensation (Dust Diseases) Act 1942* to close the Dust Diseases Reserve Fund under that Act. The balance in that Fund and its role as the collection fund for contributions by insurers to the liabilities that arise under that Act will be transferred to the existing Workers' Compensation (Dust Diseases) Fund under that Act.

First print



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of other Acts	2

Schedules

1 Amendment of Workers Compensation Act 1987	3
2 Amendment of other Acts	54



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

No , 1996

A Bill for

An Act to amend the *Workers Compensation Act 1987* to make further provision with respect to maximum workers compensation benefits, journey claims, deductions for previous injuries, weekly payments of compensation, conciliation of disputes, and in other respects; to amend certain other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *WorkCover Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

4 Amendment of other Acts 10

Each Act set out in Schedule 2 is amended as set out in that Schedule.

Schedule 1 **Amendment of Workers Compensation Act 1987**

(Section 3)

1.1 **Amendments—new conciliation arrangements**

[1] **Section 3 Definitions** 5

Insert the following definitions in section 3 (1) in alphabetical order:

existing claim has the meaning given by section 87D.

new claim has the meaning given by section 87D.

Principal Conciliator means the Principal Conciliator appointed under section 87F. 10

[2] **Section 3 (6)**

Insert after section 3 (5):

- (6) Notes included in the text of this Act do not form part of this Act.

[3] **Part 4, Division 1A** 15

Insert before Division 1 of Part 4:

Division 1A Special conciliation provisions for new claims

87D Definitions

- (1) In this Act: 20

existing claim means, subject to any regulations under this section that modify this definition:

- (a) any claim for compensation made before the commencement of this Division (as inserted by the *WorkCover Legislation Amendment Act 1996*), and 25
- (b) any claim for compensation made after that commencement that is a further claim in respect of an injury for which a claim was made before that commencement.

new claim means any claim for compensation that is not an existing claim.

- (2) The regulations can modify the definition of ***existing claim*** in this section and for that purpose can contain provisions of a savings or transitional nature with respect to the application of provisions of this Part to and in respect of claims that as a result of any such regulations become or cease to be existing claims. 5
- (3) In modifying the definition of ***existing claim***, the regulations can even provide that no claims are existing claims (with the result that all claims will be dealt with as new claims), or alternatively can provide that all claims are existing claims (with the result that no claims will be dealt with as new claims). 10

87E Conciliation officers for new claims or existing claims 15

- (1) A person employed or appointed as a conciliation officer may be so employed or appointed as a conciliation officer for new claims (a ***new claims conciliation officer***) or for existing claims (an ***existing claims conciliation officer***). If a person is not employed or appointed as a new claims conciliation officer, the person is taken to have been employed or appointed as an existing claims conciliation officer. 20
- (2) New claims conciliation officers may be referred to as conciliation officers or as conciliators. 25

87F Principal Conciliator for new claims

- (1) Of the persons employed as new claims conciliation officers one is to be appointed by the head of the Department of Industrial Relations as the Principal Conciliator. When a person is appointed as the Principal Conciliator, any previous appointment of a person as the Principal Conciliator ceases to have effect. 30
- (2) The Principal Conciliator has and may exercise in respect of new claims all the functions of the Senior Conciliation Officer, in place of the Senior Conciliation Officer. 35

-
- (3) The Principal Conciliator can delegate to any new claims conciliation officer any of the Principal Conciliator's functions under this Part, including any function that the Principal Conciliator has under subsection (2), but cannot delegate this power of delegation.

5

[4] Section 96 Conciliation officers

Omit "Officers of the Authority" from section 96 (1).
Insert instead "Officers of the Authority or of the Department of Industrial Relations".

[5] Section 96 (4)

10

Insert after section 96 (3):

- (4) In the month of May in each year, the Minister is to prepare and forward to the WorkCover Authority an estimate of the expenditure to be incurred by the Department of Industrial Relations in relation to the exercise of the functions of conciliation officers under this Act by conciliation officers who are officers of that Department, including the remuneration payable to those officers.

15

[6] Section 97 Referral of disputes for conciliation

20

Insert at the end of section 97:

Note. Disputes involving new claims are to be referred to the Principal Conciliator, not the Senior Conciliation Officer.

- (3) The validity of a referral under this section is not affected by the incorrect referral of a dispute to the Principal Conciliator or the incorrect referral of a dispute to the Senior Conciliation Officer, and either can refer a dispute referred to him or her to the other.

25

[7] Section 98A Power of conciliation officer to require information

Insert after section 98A (5):

- (6) The regulations may make provision for or with respect
to any of the following matters:
 - (a) excepting specified kinds of information or documents from the operation of this section, 5
 - (b) the circumstances in which information or documents furnished or produced to a conciliation officer under this section may or may not be furnished or produced by the conciliation officer to any other party to the dispute. 10

[8] Section 98D Certificates as to conciliation of disputes

Insert after section 98D (2):

- (2A) A conciliation officer is to issue a conciliation certificate for a dispute at the request of the Senior Conciliation Officer. 15
- (2B) The Senior Conciliation Officer may, either on the recommendation of the conciliation officer or on his or her own initiative, refer a conciliation certificate to the Registrar of the Compensation Court to form part of any file of the Court on proceedings commenced, or that may later be commenced, in relation to the dispute concerned. 20

[9] Section 98D (3)

Re-number paragraph (e) of section 98D (3) as paragraph (f) and omit "in the opinion of the conciliation officer" from that paragraph. 25

[10] Section 98D (3) (e)

Insert after section 98D (3) (d):

- (e) if conciliation was unsuccessful (wholly or partially) the reasons for that, 30

[11] Sections 98E, 98F

Insert after section 98D:

98E Time within which disputes must be referred to conciliation

The regulations may make provision for or with respect to limiting the time within which a dispute in respect of a new claim can be referred for conciliation under this Division. 5

98F Agreements arising from conciliation

- (1) If the conciliation of a dispute under this Division gives rise to an agreement between the parties, the conciliation officer may assist the parties in drafting written terms of agreement or in completing any approved standard form of agreement. 10
- (2) If the agreement relates to compensation under section 66 or 67, the conciliation officer can refer the agreement to the Senior Conciliation Officer for forwarding on to the Authority to be registered under section 66A. An application for registration of the agreement under section 66A is then taken to have been made by a party to the agreement. 15
20
- (3) If the agreement relates to other compensation, it may, with the consent of the parties, be registered by the Authority (in the case of existing claims) or by the head of the Department of Industrial Relations (in the case of new claims). 25
- (4) The following are examples of the provisions that an agreement arising from conciliation of a dispute can contain:
 - (a) provision for the employer or insurer to continue to pay compensation for a specified minimum period subject to compliance by the worker with specified conditions, 30

- (b) provisions to cover matters such as the supply of medical certificates certifying as to incapacity and requirements for participation by the worker in the employer's workplace rehabilitation program, rehabilitation training or other specified activities designed to assist the worker to return to work, 5
- (c) provisions designed to avoid or minimise further disputes between the parties, such as provisions requiring the parties to communicate with the conciliation officer concerning any dispute or potential dispute, 10
- (d) provision for a review of the agreement at a specified time, either by the parties alone or in consultation with the conciliation officer,
- (e) provisions designed to deal with any further disputes that might arise, so as to resolve them quickly while keeping costs to a minimum. 15

[12] Section 100A Proceedings before conciliation officers

Insert "in respect of an existing claim" after "dispute" wherever occurring in section 100A (2) and (3). 20

[13] Section 100A (2A)

Insert after section 100A (2):

- (2A) A person who is a party to any dispute in respect of a new claim is entitled to be represented by a barrister or solicitor, and by an agent of such a class as may be prescribed by the regulations. The conciliation officer may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party. 25
30

[14] Section 100A (3C)

Insert after section 100A (3B):

- (3C) A conciliation officer may, subject to any general directions by the Senior Conciliation Officer:

-
- (a) hold a conciliation conference with all relevant parties in attendance and, if the conciliation officer considers appropriate, with the employer (in the employer's own right, even if the employer is represented by an insurer) and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them, and 5
- (b) in a case where the employer concerned is represented by an insurer—nevertheless communicate directly with the employer about the provision of suitable employment for the worker or any other matter connected with the dispute. 10

[15] Section 100A (7)

Insert after section 100A (6): 15

- (7) An agreement that arises from the conciliation of a dispute under this Division is not admissible in proceedings before the Compensation Court, except:
- (a) when the parties to the agreement otherwise agree, or 20
- (b) in such circumstances as the regulations may specify.

[16] Section 102 Existing claims for weekly payments—commencement of payments

Insert at the end of section 102 (1): 25

This section does not apply to new claims.

[17] Section 102A

Insert after section 102:

102A New claims for weekly payments—commencement of payments 30

- (1) This section applies only to new claims.
- (2) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.

- (3) If the person on whom a claim is made disputes liability to make the weekly payments within 21 days after the claim for compensation is duly made, the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) does not apply. 5

Note. If liability is disputed the worker can refer the dispute to conciliation. See section 106FB.

- (4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (2) and (3) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends: 10

- (a) 42 days after the claim for compensation is duly made, or
(b) when the person ceases to have that reasonable excuse, 15
whichever is earlier. 20

- (5) An employer has such a reasonable excuse if:
(a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and 25
(b) the employer has complied with all reasonable requests of the insurer with respect to the claim.
(6) This section ceases to apply if the claim for compensation is withdrawn.

[18] Section 103 Offences—commencement of weekly payments 30
Insert “or 102A” after “102” in section 103 (1).

[19] Section 103A Disputes about continuation of weekly payments to be referred to conciliation within 21 days
Insert “This section does not apply if the claim concerned is a new claim.” after “Division 2.” in section 103A (1). 35

[20] Section 106CA

Insert before section 106D:

106CA Division applies only to existing claims

This Division applies only to court proceedings in respect of an existing claim.

5

[21] Part 4 Division 3B

Insert after Division 3A of Part 4:

Division 3B Restrictions on commencing court proceedings—new claims

106FA Division applies only to new claims

10

This Division applies only to court proceedings in respect of a new claim.

106FB Restrictions on commencing court proceedings about weekly payments

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 2 and either:
- 15
- 20
- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) the conciliation officer has given a notification under section 104 (3) in respect of the dispute, or
- (c) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- 25
- whichever happens first.
- (2) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 2 until:
- 30

- (a) the person on whom the claim is made has disputed liability to make the payments, or
- (b) the time within which the person on whom the claim is made is required under section 102A to commence those payments has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute),
5
whichever happens first.

Note. Section 102A allows up to 42 days for the commencement of weekly payments of compensation. 10

- (3) A worker cannot commence court proceedings in respect of *related compensation* until subsection (1) allows the commencement of proceedings in respect of the weekly payments of compensation concerned. Related compensation is compensation under Division 3 of Part 3 that relates to the incapacity for work to which the weekly payments of compensation relate. 15

- (4) This section does not prevent the commencement of court proceedings in any of the following circumstances:
 - (a) if the proceedings concern an application for a determination under section 53, 20
 - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,
 - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of this Act, 25
 - (d) any circumstances prescribed by the regulations.

106FC Restrictions on commencing court proceedings for lump sum compensation 30

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 unless a dispute about that compensation has been referred for conciliation under Division 2 and either:
 - (a) the conciliation officer has issued a certificate of conciliation outcome, or 35

-
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- whichever happens first.
- (2) A worker cannot refer a dispute about compensation under section 66 for conciliation under Division 2 until: 5
- (a) 12 weeks after the claim for the compensation is duly made, or
- (b) the person on whom the claim is made disputes liability to pay the compensation, 10
- whichever happens first.
- (3) If the person on whom a claim for compensation under section 66 is made has, within 12 weeks after that claim is duly made, duly applied under section 131 for reference of the matter to a medical panel, the worker can commence court proceedings in respect of that compensation 14 days after the panel has given its certificate under that section even if subsection (1) would otherwise prevent commencement of proceedings at that time. 15 20
- (4) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss or further loss, or for related compensation, until this section allows the commencement of proceedings in respect of compensation under section 66 for the loss or further loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss, further loss or pain and suffering. 25
- (5) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66, the proceedings are to be adjourned until: 30
- (a) 12 weeks after the claim was amended, or

- (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates, 5
whichever is later.
- (6) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (5). 10
- (7) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3). 15
- (8) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim. 20
25
- (9) This section does not prevent the commencement of court proceedings in any circumstances prescribed by the regulations. 30

106FD Restrictions on commencing court proceedings about hospital, medical and other expenses

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses) or Division 5 (Compensation for property damage) of Part 3 unless a dispute about that compensation has been referred for conciliation under Division 2 and either: 35

-
- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation, 5
- whichever happens first.
- (2) A worker cannot refer a dispute about compensation under Division 3 or 5 of Part 3 for conciliation under Division 2 until:
- (a) 28 days after the claim for compensation is duly made, or 10
- (b) the person on whom the claim is made disputes liability to pay the compensation,
- whichever happens first.
- (3) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 and are commenced in compliance with section 106FB or 106FC (whichever is appropriate). 15 20
- (4) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.
- (5) This section applies only in respect of new claims for compensation that are of a class prescribed by the regulations as subject to this section. If a new claim for compensation under Division 3 or 5 of Part 3 is not one in respect of which this section applies, section 106F applies in respect of the claim as if it were an existing claim. 25 30

106FE Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to: 35

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106FA, 106FB or 106FC applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and 5
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 10

[22] Section 107A

Omit the section. Insert instead:

107A Authority or DIR may intervene in proceedings 15

- (1) The Authority or the head of the Department of Industrial Relations (*the DIR*) has a right to be heard in any proceedings before the Compensation Court.
- (2) The Authority or the head of the DIR may, for that purpose, be represented by a barrister or solicitor or an officer of the Authority or the DIR or by any other person. 20
- (3) In any such proceedings the Authority or the head of the DIR may apply for an order for which any party may apply in those proceedings. 25

[23] Section 119 Limit on recovery of costs unreasonably incurred

Insert after section 119 (2):

- (2A) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 98D certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate. 30

[24] Schedule 2 Provisions relating to appointed conciliation officers

Omit "Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*." from clause 3.

[25] Schedule 6 Savings, transitional and other provisions, Part 10 Provisions relating to conciliation officers and weekly payments of compensation

5

Insert after clause 4:

5 New conciliation arrangements—WorkCover Legislation Amendment Act 1996

10

Amendments made by the *WorkCover Legislation Amendment Act 1996* do not affect the continuity of employment or appointment of conciliation officers employed or appointed as such immediately before the commencement of those amendments.

15

1.2 Amendments—employment required to be substantial contributing factor

[1] Section 9A

Insert after section 9:

9A No compensation payable unless employment substantial contributing factor to injury

20

(1) No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury (with "substantial" used in the sense of real and important).

25

(2) The following are examples of matters to be taken into account for the purposes of determining whether a worker's employment was a substantial contributing factor to an injury (but this subsection does not limit the kinds of matters that can be taken into account for the purposes of such a determination):

30

- (a) the time and place of the injury,
 - (b) the nature of the work performed and the particular tasks of that work,
 - (c) the duration of the employment,
 - (d) the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she has not been at work or had not worked in that employment, 5
 - (e) the worker's state of health before the injury and the existence of any hereditary risks, 10
 - (f) the worker's lifestyle and his or her activities outside the workplace.
- (3) A worker's employment is not to be regarded as a substantial contributing factor to a worker's injury merely because of either or both of the following: 15
- (a) the injury arose out of or in the course of, or arose both out of and in the course of, the worker's employment,
 - (b) the worker's incapacity for work, loss as referred to in Division 4 of Part 3, need for medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service as referred to in Division 3 of Part 3, or the worker's death, resulted from the injury. 20
25
- (4) This section does not apply in respect of an injury to which section 10, 11 or 12 applies.

[2] Section 11A No compensation for psychological injury caused by reasonable actions of employer

Omit section 11A (1). Insert instead: 30

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the

employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.

- [3] **Section 11A (5)** 5
Omit the subsection.
- [4] **Section 11A (6)**
Insert at the end of section 11A (6):
This section does not affect section 9A (No compensation payable unless employment substantial contributing factor to injury). 10
- [5] **Section 11A (7)**
Omit the subsection. Insert instead:
(7) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 92) use, for the purpose of describing the worker's condition, accepted medical terminology and not only terminology such as "stress" or "stress condition". 15
20
- [6] **Section 11A (8)**
Insert "then (unless the insurer or self-insurer waives that requirement)" after "deficient claim".
- [7] **Section 11A (8) (a)** 25
Insert "or 102A" after "102".
- [8] **Section 16 Aggravation etc of diseases—employer liable, date of injury etc**
Omit "contributing factor" wherever occurring.
Insert instead "substantial contributing factor". 30

[9] Section 19 Diseases deemed work related

Omit "contributing factor" from section 19 (1) (b).
Insert instead "substantial contributing factor".

[10] Section 92 Making of claim for compensation

- Insert after section 92 (1B): 5
- (1C) The medical certificate required to accompany a claim for weekly payments of compensation must include a statement of the medical practitioner's opinion (however expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor. 10
- (1D) If a claim is deficient because subsection (1C) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement): 15
- (a) the claim is not considered to have been duly made for the purposes of section 102 or 102A until subsection (1C) is complied with, and 20
- (b) court proceedings cannot be commenced in respect of the claim until subsection (1C) is complied with. 25
- (1E) All claims for compensation under section 66 and 67 in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later. 30

**[11] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

Insert after clause 8:

**9 Requirement that employment be substantial
contributing factor**

- | | | |
|-----|--|--------------|
| (1) | Section 9A of this Act, as inserted by the <i>WorkCover Legislation Amendment Act 1996</i> , does not apply to injuries received before the commencement of that section. | 5 |
| (2) | The amendments made to section 11A, 16, 19 and 92 of this Act by Schedule 1.2 to the <i>WorkCover Legislation Amendment Act 1996</i> do not apply in respect of injuries received before the commencement of the amendments, except as provided by subclause (3). | 10 |
| (3) | Section 92 (1C) and (1D) extend to apply to an injury that is a psychological injury within the meaning of section 11A that was received before the commencement of those subsections and after the commencement of section 11A. | 15 |
| (4) | In a case where section 16 deems an injury to have happened within 12 months after the commencement of section 9A, sections 16 (2) and 68B (3) are, in their application in respect of any period of employment before the commencement of section 9A, to be read as if a reference in those provisions to employment that was a substantial contributing factor were a reference to employment that was a contributing factor (whether or not a substantial contributing factor). | 20

25 |

1.3 Amendments—journey claims

[1] Section 10 Journey claims

30

Omit section 10 (1A). Insert instead:

- (1A) Subsection (1) does not apply if the personal injury is attributable to the serious and wilful misconduct of the worker.

WorkCover Legislation Amendment Bill 1996 (No 2)

Schedule 1 Amendment of Workers Compensation Act 1987

[2] Section 10 (1B)

Omit "to have been caused by the fault of the worker".
Insert instead "to be attributable to the serious and wilful misconduct of the worker".

[3] Section 10 (1C)

5

Omit the subsection.

[4] Section 10 (6)

Omit the definition of *fault*.

**[5] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

10

Insert after clause 2 (2):

- (3) Section 10 of this Act continues to apply in respect of personal injury received by a worker before the commencement of the amendments made to that section by the *WorkCover Legislation Amendment Act 1996* as if those amendments had not been made.

15

**1.4 Amendments—reduction in maximum lump sum
compensation amounts**

[1] Section 66 Compensation for permanent injuries

Omit "\$132,300" from section 66 (1).
Insert instead "\$100,000".

20

[2] Section 66 (2)

Omit "\$160,950". Insert instead "\$121,000".

[3] Section 67 Compensation for pain and suffering

Omit "\$66,200" from section 67 (1).
Insert instead "\$50,000".

25

**[4] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert after clause 17:

**18 Reduction in lump sum compensation amounts—1996
amendments** 5

- (1) Despite sections 66 (3) and 67 (6), the compensation payable under section 66 or 67 in respect of any injury received before the commencement of the amendment of those sections by the *WorkCover Legislation Amendment Act 1996* where no claim for compensation under either section 66 or 67 in respect of the injury was duly made by the worker before that commencement is to be calculated by reference to the requisite percentage of the amounts in force under the relevant section immediately after its amendment by that Act. 10 15
- (2) If proceedings are pending before the Compensation Court on a claim for compensation under section 66 or 67, a claim for that compensation is taken not to have been made before the commencement of the amendments to which this clause applies if: 20
- (a) no claim for that compensation was duly made before the commencement of those amendments, or
- (b) the worker did not, before the commencement of those amendments, give the employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation claimed. 25 30
- (3) If this clause results, in a particular case, in a greater amount of compensation being payable in that case than would have been the case in the absence of this clause, this clause does not apply in that particular case.

1.5 Amendments—discontinuation of weekly payments after 2 years

[1] Section 38A Determination of whether worker is seeking suitable employment

Insert “and section 52A (Discontinuation of weekly payments after 2 years)” after “section 38” in section 38A (1). 5

[2] Section 38A (4)

Insert “or to the discontinuation of weekly payments under section 52A” after “section 38”.

[3] Section 40A Assessment of incapacitated worker’s ability to earn 10

Insert “, and about the possible effects of section 52A on the worker” after “those entitlements” in section 40A (2).

[4] Sections 52A and 52B

Insert after section 52: 15

52A Discontinuation of weekly payments after 2 years

(1) Weekly payments of compensation in respect of incapacity for work are not payable for any period beyond the first 104 weeks of incapacity for work (whether total or partial, or a combination of both) in respect of which the worker has received or is entitled to receive weekly payments of compensation but only if one or more of the following paragraphs applies to the worker: 20

(a) the worker is partially incapacitated for work, is not suitably employed (within the meaning of section 43A, has not yet exhausted his or her entitlement to compensation under section 38 and is not seeking suitable employment (as determined in accordance with section 38A), 25 30

-
- (b) the worker has received weekly payments (including payments during rehabilitation training) under section 38 for the maximum total period under that section and has subsequently unreasonably refused an offer of suitable employment for which the worker received that training, 5
- (c) the worker has received weekly payments under section 38 for the maximum total period under that section but has failed to obtain suitable employment solely because of the state of the labour market (rather than because of the effects of the worker's injury). 10
- (2) Weekly payments of compensation do not cease to be payable pursuant to this section until the person liable to make the payments has given the worker at least 12 weeks notice (a **payment discontinuation notice**) of the person's intention to discontinue the payments under this section (even if this would result in the worker receiving the payments for more than 104 weeks). The regulations may provide that the requirements of this subsection do not apply in specified cases or classes of cases. 15 20
- (3) The following requirements apply to a payment discontinuation notice:
- (a) the notice must contain a statement of the grounds on which the notice is given (by reference to which of paragraphs (a), (b) and (c) of subsection (1) applies to the worker) and must inform the worker of action by the worker that is necessary to prevent the discontinuation of weekly payments, 25 30
- (b) the notice is to be given to the worker personally or by post,
- (c) the notice must contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers. 35
-

- (4) The fact that the worker becomes temporarily totally incapacitated for work after service of the payment discontinuation notice does not prevent the discontinuation of weekly payments under this section.
- (5) The payment discontinuation notice can be given up to 12 weeks before the end of the 104 week period for which the worker has received or is entitled to receive weekly payments of compensation but cannot be given earlier than that. 5
- (6) Once a payment discontinuation notice is given, and so long as the worker has provided the worker's employer or the employer's insurer with a certificate by a medical practitioner specifying the expected duration of the worker's incapacity, the person paying the compensation must not discontinue payment, or reduce the amount, of the compensation during the period of incapacity so specified until the worker has received another 12 weeks of payments. This subsection does not apply to a reduction in weekly compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable (whether under section 38 or otherwise). 10 15 20
- (7) A payment discontinuation notice can be withdrawn at any time by notice given in writing to the worker by the person who gave the notice, and once withdrawn is taken never to have been given (for the purposes of the further operation of this section in relation to the cessation of weekly payments of compensation). This subsection does not prevent the giving of a further payment discontinuation notice. 25 30
- (8) In determining the period for which a worker has received or is entitled to receive weekly payments of compensation, separate periods during which the worker received or is entitled to receive those payments are to be aggregated. 35
- (9) The giving of a payment discontinuation notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

-
- (10) This section does not apply to a worker who is permanently and totally incapacitated for work and does not apply to compensation for an injury received by a person as a worker employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies.

5

52B Proceedings in Compensation Court on dispute about discontinuation of weekly payments after 2 years

- (1) The Compensation Court may, on the application of the worker made within 12 weeks after the payment discontinuation notice under section 52A is given to the worker, determine any dispute about the operation of that section. The regulations may make provision for modifying the operation of this subsection in its application to cases in which a payment discontinuation notice is not required to be given under section 52A.
- (2) The fact that proceedings are pending in the Compensation Court on an application under subsection (1) does not prevent the discontinuation of weekly payments of compensation in accordance with section 52A, subject to any order of the Compensation Court under this section.
- (3) When proceedings on a dispute are pending under subsection (1) before the Compensation Court, the worker may apply to the court for an interim award of weekly compensation pending determination of the dispute by the court.
- (4) The Compensation Court may make such an interim award only if satisfied that the worker is subject to hardship and there is likely to be an unusually long delay that is beyond the control of the worker (and the worker's representatives) until the hearing of the matter.
- (5) Any such interim award is to be made subject to the following conditions:

10

15

20

25

30

- (a) the worker must supply to the worker's employer or another specified person from time to time medical certificates relating to the incapacity for work to which the award relates,
 - (b) if the worker is partially incapacitated for work and is not suitably employed (within the meaning of section 43A) and has not yet exhausted the worker's entitlement to compensation under section 38, the worker must take steps to obtain suitable employment for the purposes of section 38 (as determined in accordance with section 38A). 5
- (6) Subject to any further order of the Compensation Court, interim payments of compensation under this section may be suspended while the worker is in breach of any conditions of the interim award or is guilty of unreasonable delay in taking some step in the proceedings on the dispute. 10
- (7) The Compensation Court can make a determination under this section whether or not at the time in respect of which the determination is made the worker is actually entitled to receive any weekly payment for incapacity or would be so entitled but for the operation of section 52A. 15
- (8) If the Compensation Court subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Court: 20
 - (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and 25
 - (b) orders the worker or other person to refund those payments or a specified part of those payments. 30
- (9) This section does not affect the recovery of weekly payments under section 58. 35

**[5] Schedule 6 Savings, transitional and other provisions, Part 4
Provisions relating to weekly payments of compensation**

Insert after clause 13:

14 Discontinuation of weekly payments after 2 years

- | | | |
|-----|--|----------|
| (1) | Section 52A (as inserted by the <i>WorkCover Legislation Amendment Act 1996</i>) applies only to compensation payable in respect of an injury received after the commencement of that section, except as provided by this clause. | 5 |
| (2) | Section 52A extends to the compensation payable in respect of an injury received before that commencement (but after the commencement of this Act), subject to the following: | 10 |
| (a) | A payment discontinuation notice must not be given until the person liable to make the weekly payments has given the worker a notice (a <i>preliminary notice</i>) informing the worker about the existence and effect of section 52A and alerting the worker to the possible application of that section to the worker. | 15
20 |
| (b) | The earliest that a preliminary notice can be given to the worker is when the worker would still have to receive at least 52 weeks of weekly payments of compensation in order to bring the total number of weeks of weekly payments received by the worker (both before and after that commencement) to 104 (even if this would result in the worker receiving the payments for more than 104 weeks). | 25 |
| (c) | The preliminary notice is to contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self insurers. | 30 |
| (d) | The earliest that a payment discontinuation notice under section 52A (3) can be given to a worker is: | 35 |

WorkCover Legislation Amendment Bill 1996 (No 2)

Schedule 1 Amendment of Workers Compensation Act 1987

- (i) after a period in respect of which the worker has received or is entitled to receive at least 40 weeks of weekly payments since the preliminary notice was given, and
 - (ii) at least 12 weeks before the end of the period of 104 weeks referred to in paragraph (b),
even if this would result in the worker receiving the payments for more than 104 weeks.
- (e) For the purposes of the determination of the period of 104 weeks referred to in paragraphs (b) and (d), a worker is presumed to have received no more than 52 weeks of weekly payments before that commencement, with the result that if a worker received more than 52 weeks of weekly payments before that commencement the number of weekly payments in excess of 52 is to be disregarded.
- (f) In the case of any period of incapacity for work to which clause 5A (2) or 5B (4) of Part 4 of Schedule 6 applies, section 52A (2) (a) is to apply as if it read as follows:
 - (a) the worker is partially incapacitated for work, is not suitably employed, has not yet exhausted his or her entitlement to compensation under section 38 and either:
 - (i) the worker's employer has not failed to provide suitable employment, or
 - (ii) the worker's employer has failed to provide suitable employment but the worker is not seeking suitable employment or receiving rehabilitation training,
as determined in accordance with section 38 as applicable to the case under clause 5A or 5B of Part 4 of Schedule 6.
- (3) Section 52A does not apply in any of the following cases:

-
- (a) a case where the worker is receiving or entitled to receive weekly payments of compensation under a court award made before the commencement of that section,
 - (b) a case where court proceedings in which the worker is claiming weekly payments of compensation for which the employer or insurer has denied liability (including proceedings on an application for a determination under section 51 where there has been such a denial) are pending as at the commencement of that section,
 - (c) a case where court proceedings on an application for a determination under section 51 are pending as at the commencement of section 52A and the employer or insurer has not denied liability to make weekly payments of compensation, but only if approval under section 51 (1) (c) has been given before that commencement.
 - (4) The giving of a preliminary notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.
 - (5) The regulations may provide that this clause or specified provisions of this clause do not apply in specified cases or classes of cases.
- 1.6 Amendments—deduction for previous injuries and pre-existing conditions and abnormalities**
- [1] Section 66A Registration of agreements for compensation**
- Omit “section 71” from section 66A (7).
Insert instead “this Part”.
- [2] Section 68 Proportionate loss of use**
- Insert after section 68 (3):
- (4) This section does not apply to a loss for which the Table to this Division provides a range of percentages.

Omit section 68A. Insert instead:

- | | | |
|-----|--|----------|
| (1) | In determining the compensation payable under this Division for a loss, there is to be a deduction for any proportion of the loss that is due to any previous injury (whether or not it is an injury for which compensation has been paid or is payable under this Division) or that is due to any pre-existing condition or abnormality. | 5
10 |
| (2) | The proportion of a loss that is required to be deducted because of subsection (1) is the <i>deductible proportion</i> for that loss. | |
| (3) | If another loss (the <i>secondary loss</i>) was suffered by the worker as a consequence of a loss (the <i>primary loss</i>) for which there is a deductible proportion under subsection (1) and both losses resulted from the same injury, then in determining the compensation payable under this Division for the secondary loss there is to be a deduction of the proportion equal to the deductible proportion for the primary loss. | 15
20 |
| (4) | Subsection (3) does not limit the application of subsection (1) in relation to the secondary loss, with the result that there can be a deductible proportion for the secondary loss in its own right under subsection (1) (as well as under subsection (3) for the loss as a secondary loss). | 25 |
| (5) | This section is not limited to applying in respect of a loss of a proportion of a thing mentioned in the Table to this Division and applies even if the loss consists of the loss of all of such a thing. | 30 |

-
- (6) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding litigation) that the deductible proportion (or the relevant part of it) is 10%, unless this assumption is at odds with the available evidence.

5
 - (7) The reference in subsection (6) to medical evidence is, in the context of court proceedings, a reference to medical evidence properly admitted in the proceedings and accepted or preferred by the court.

10
 - (8) Section 70 applies for the purpose of determining the extent (if any) that a worker's loss of hearing is due to presbycusis.

15

68B Deductions under section 68A—operation of sections 15, 16, 17 and 22

- (1) When determining the compensation payable for a loss for the purposes of the apportionment of liability under section 22, there is to be no deduction under section 68A for any proportion of the loss that is due to an injury in respect of which liability is to be apportioned (but without affecting any deduction under that section for any proportion of the loss that is due to any other injury or that is due to any pre-existing condition or abnormality).

20
25
- (2) When determining the compensation payable in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality).

30
35

- (3) When determining the compensation payable in a case in which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration or that is due to any pre-existing condition or abnormality). 5 10 15
- (4) When determining the compensation payable in a case in which section 17 applies (loss of hearing) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality). 20 25
- [4] Section 71 Further loss of function—occupational diseases**
Omit the section.
- [5] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities)** 30
Insert at the end of the Part:
- 19 Deduction for previous injuries and pre-existing conditions and abnormalities**
- (1) The amendments made by the *WorkCover Legislation Amendment Act 1996* that amended sections 68 and 68A and repealed section 71 are taken to have had effect from the commencement of this Act, but not so as to affect: 35

-
- (a) any award of compensation made before the date of commencement of the amendments, or
 - (b) any compensation that a worker has received or agreed to receive before that date, or
 - (c) any award of, or compromise or settlement of a claim for, damages made before that date, or 5
 - (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before that date.
- (2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68A applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3. 10 15

1.7 Amendments—evidentiary value of medical panel reports and certificates

[1] Section 119 Limit on recovery of costs unreasonably incurred 20

Insert at the end of section 119 (2) (c):

, or

- (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by section 136 (1A)) and the court is of the opinion that the application was not reasonably justified. 25

[2] Section 131 Referral of medical disputes to referee or panel on application of worker or employer

Omit section 131 (5E).

[3] Section 136 Admissibility and evidentiary value of certificates and reports of medical referees and panels

5

Insert after section 136 (1):

(1A) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report. 10

(1B) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court. 15

[4] Schedule 6 Savings, transitional and other provisions, Part 12 Provisions relating to medical examinations and disputes

20

Insert after clause 7:

8 Evidentiary value of certificates and reports of medical panels

The amendments made to sections 119 and 136 of this Act by the *WorkCover Legislation Amendment Act 1996* extend to a certificate or report given after the commencement of those subsections in respect of an injury received before that commencement, but those amendments do not apply in respect of court proceedings pending or determined as at their commencement. 25
30

1.8 Amendments—claims excess payable by employers

[1] Section 160 Recovery of excess from employer

Omit the definition of *prescribed excess amount* from section 160 (1).

Insert instead:

5

prescribed excess amount in respect of a weekly compensation claim means an amount equal to the first 2 weeks of weekly payments of compensation on the claim.

[2] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurance

10

Insert after clause 18:

18A Claims excess—1996 amendment

(1) The amendment of section 160 of this Act by the *WorkCover Legislation Amendment Act 1996* applies in respect of injuries to workers that occurred after the commencement of the amendment. The section continues to apply (as if it had not been amended by that Act) in respect of injuries to workers that occurred before that commencement.

15

20

(2) A policy of insurance under this Act that relates to a period that includes any period after the commencement of the amendment referred to in subclause (1) is taken to include provision that gives effect to that amendment and subclause (1).

25

1.9 Amendments—marketing of legal and agency services

[1] Section 148B Definitions

Re-number paragraph (b) of the definition of *protected claim* as paragraph (c) and insert before that paragraph:

(b) a claim for the cost of provision of a hearing aid,
and

30

[2] Section 148B (1A)

Insert after section 148B (1):

- (1A) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 148C does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct. 5

[3] Section 148HA

Insert after section 148H: 10

148HA Power to restrict or ban recovery of costs by solicitors

- (1) The Authority can by notification given to insurers and self-insurers direct that a solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with. 15
- (2) Such a notification cannot be given unless the Authority is satisfied that the solicitor or a member of the firm of solicitors or a voting shareholder of the solicitor corporation is a director of or has a financial interest in an agent and: 20
- (a) the agent has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5), or 25
- (b) a director of the agent or other person concerned in the management of the agent has persistently engaged in any such conduct. 30
- (3) Before the Authority gives such a notification it must give the solicitor, solicitor corporation or firm of solicitors a reasonable opportunity to make written submissions to the Authority on the matter.

-
- (4) The effect of a notification under this section is that the solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force. 5
- (5) A solicitor, solicitor corporation or firm of solicitors aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders. 10
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the solicitor, solicitor corporation or firm of solicitors concerned. 15
- (7) For the purposes of this section, a *financial interest* in an agent is a share in the capital of the business conducted by the agent or any entitlement to receive any income derived from the business or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise. 20
- [4] Section 148J Past conduct included in assessing persistent conduct** 25
- Omit "section 148H and 148I".
Insert instead "sections 148H, 148HA and 148I".
- [5] Section 148J (2)**
- Insert at the end of section 148J (2): 30
- For the purposes of section 148HA, at least one instance of the conduct must have occurred after the commencement of that section.

[6] Section 148L

Insert after section 148K:

148L Regulation of advertising

- (1) The regulations may make provision for or with respect
to regulating (including prohibiting) conduct by any 5
person (including advertising) that relates to the
marketing of services to be provided by a lawyer or
agent in connection with claims for compensation under
this Act.
- (2) A regulation may not be made under this section except 10
with the concurrence of the Minister administering the
Legal Profession Act 1987.
- (3) Any such regulation can impose a penalty not exceeding
200 penalty units for any contravention of the
regulations. 15

**[7] Schedule 6 Savings, transitional and other provisions, Part 9
Provisions relating to notice of injury and claims for
compensation**

Insert at the end of clause 6:

- (2) The amendment made by the *WorkCover Legislation* 20
Amendment Act 1996 to insert section 148B (1A) is
made for the purpose of the removal of doubt and
accordingly is taken to have had effect from the
commencement of that section as inserted by the
WorkCover Legislation Amendment Act 1995. 25

**1.10 Amendments—transfer of WorkCover Authority
functions to Public Trustee**

[1] Sections 29 and 30

Omit “the Authority” and “The Authority” wherever occurring.
Insert instead “the Public Trustee” and “The Public Trustee” 30
respectively.

[2] Section 31 Payment in respect of dependent children

Omit "to the Authority".

Insert instead "to the Public Trustee in trust".

[3] Section 31

Omit "by the Authority".

Insert instead "by the Public Trustee".

5

[4] Section 83 Manner of payment of compensation

Insert "or the Public Trustee" after "the Authority" in section 83 (7).

[5] Section 85 Payments to Public Trustee for benefit of beneficiary

10

Omit "to the Authority" where firstly occurring.

Insert instead "to the Public Trustee in trust".

[6] Section 85

Omit "the Authority" and "The Authority" wherever occurring (except where firstly occurring).

Insert instead "the Public Trustee" and "The Public Trustee" respectively.

15

[7] Section 86

Omit the section. Insert instead:

86 Public Trustee's powers of investment

20

- (1) All amounts held by the Public Trustee under this Act are to form part of the common fund under section 36A of the *Public Trustee Act 1913* and are available for investment as provided by that Act.

- (2) A power conferred by this Division on the Public Trustee to invest money for the benefit of a person includes a power to invest the money in any manner that the Public Trustee is authorised under the *Public Trustee Act 1913* to invest money held in trust by the Public Trustee. 5

[8] Section 87 Unclaimed money

Omit "the Authority" wherever occurring.
Insert instead "the Public Trustee".

**[9] Schedule 6 Savings, transitional and other provisions, Part 19
Miscellaneous provisions 10**

Insert after clause 5:

6 Transfer of functions from Authority to Public Trustee

- (1) In this clause:

the Public Trustee amendments means the amendments made by Schedule 1.10 to the *WorkCover Legislation Amendment Act 1996*. 15
- (2) An application made under section 29 or 30 of this Act to or by the Authority before the commencement of the Public Trustee amendments is to continue and be dealt with as if those amendments had not been made. 20
- (3) A decision of the Authority under section 29 is, after the commencement of the Public Trustee amendments, taken to be a decision of the Public Trustee.
- (4) All money and investments belonging to the common fund, Income Suspense Account or Investment Guarantee Account referred to in section 86 of this Act are to be transferred from the Authority to the Public Trustee, to form part of the common fund under section 36A of the *Public Trustee Act 1913*. 25

-
- (5) Compensation paid to the Authority under section 85 of this Act is after the commencement of the Public Trustee amendments taken to have been paid to the Public Trustee under that section. Anything done by the Authority under sections 85–87 is after the commencement of the Public Trustee amendments taken to have been done by the Public Trustee. 5
- (6) The Public Trustee amendments do not affect any liability of the Authority that arose before the commencement of those amendments or that arises after that commencement in respect of any act or omission by the Authority before that commencement. Any such liability remains a liability of the Authority and does not (as a result of those amendments) become a liability of the Public Trustee. 10
15

1.11 Amendment—rules and regulations with respect to medical evidence

Section 137 Rules of Court and regulations with respect to medical evidence

Insert “(including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report)” after “panels” in section 137 (b). 20

1.12 Amendments—making a claim for compensation

[1] Section 92 Making of claim for compensation

Omit section 92 (4B). Insert instead: 25

- (4B) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority. 30

[2] Section 92 (6)

Insert after section 92 (5):

- (6) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or occupational rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliation officer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim. 5
10

1.13 Amendment—deemed employment of participants in workplace based training programs 15

Schedule 1 Deemed employment of workers

Insert after clause 17A:

18 Participants in training programs

- (1) The regulations may:
 - (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and 20
 - (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program. 25
- (2) A person who is a participant in a declared training program is for the purposes of this Act taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the 30

person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.

- (3) A payment that is declared by the regulations to be wages in respect of a participant in a declared training program is taken for the purposes of this Act to be the participant's wages in the employment by the person who provides the workplace based training. 5
- (4) Except to the extent that the regulations may otherwise provide, this clause does not apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause. 10

1.14 Amendment—penalty increase (requirement to keep register of injuries) 15

Section 90 Register of injuries

Omit "20 penalty units" from section 90 (5).
Insert instead "50 penalty units".

1.15 Amendments—misleading conduct by insurers and brokers 20

[1] Section 156A

Insert after section 156:

156A Misleading conduct by insurers and brokers with respect to business insurance 25

- (1) In this section:

broker means a person who is an insurance intermediary within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth.

insurer means a person who carries on insurance business as defined in the *Insurance Act 1973* of the Commonwealth.

- (2) An insurer or broker must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause an employer to believe that the insurance is comprehensive for business needs, unless:
- (a) the insurance includes the insurance required by this Act, or
- (b) the representation includes a clear statement to the effect that the insurance does not include workers compensation insurance and that workers compensation insurance is compulsory for employers.
- (3) An insurer or broker who contravenes this section is guilty of an offence.
Maximum penalty: 200 penalty units.
- (4) In any action under section 144, 145, 145A or 156 in respect of a failure by an employer to obtain or maintain in force a policy of insurance, the court hearing the action may order that a specified insurer or broker be joined as a party in the proceedings if the court thinks that the insurer or broker may be culpable in the matter.
- (5) An insurer or broker is culpable in a matter if it appears that the insurer or broker has engaged in conduct that constitutes a contravention of this section (whether or not the insurer or broker has been prosecuted for or convicted of an offence in respect of the contravention) and that conduct caused or contributed significantly to the failure by the employer to obtain or maintain the insurance concerned.
- (6) In any proceedings in which an insurer or broker is joined as a party under this section the court hearing the proceedings may, if satisfied that the insurer or broker is culpable in the matter, order that the insurer or broker is to be jointly and severally liable with any other party in respect of any amount ordered to be paid by that other

party in the proceedings or is to be separately liable, in place of that other party, as to the whole or a specified part of any amount that the other party might be ordered to pay in the proceedings.

[2] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurers 5

Insert after clause 24:

25 Conduct of insurers and brokers—1996 amendments

Section 156A (as inserted by the *WorkCover Legislation Amendment Act 1996*) does not apply in respect of conduct that took place before the commencement of the section. 10

1.16 Amendments—compliance with provisions that restrict commencement of proceedings

[1] Section 66B No proceedings to enter up award on agreement for compensation 15

Insert after section 66B (2):

- (3) The rules of the Compensation Court and the regulations may make provision for or with respect to:
 - (a) requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that the proceedings are not prevented by this section from being entertained by the Court, and 20
 - (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 25 30

[2] Section 106G

Insert after section 106F:

106G Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to: 5

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106D, 106E or 106F applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and 10
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 15

1.17 Amendment—rate of interest on common law damages

Section 151M Payment of interest 20

Omit section 151M (6). Insert instead:

- (6) **Rate of interest**
The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the *Supreme Court Act 1970* for the period concerned. 25

1.18 Amendments—special provisions for coal miners

[1] Schedule 6 Savings, transitional and other provisions, Part 4 Provisions relating to weekly payments of compensation

Omit paragraph (b) from clause 4A (1). Insert instead:

- (b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act. 5

[2] Schedule 6, Part 18 Special provision relating to coal miners 10

Insert after clause 1 (2):

- (3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:
 - (a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and 15
 - (b) occurs after the commencement of this subclause (as inserted by the *WorkCover Legislation Amendment Act 1996*), and 20
 - (c) occurs more than 78 weeks after the date of the injury concerned, and
 - (d) occurs during the first 104 weeks of incapacity.
- (4) For the purposes of subclause (3), the first 104 weeks of incapacity is the period of incapacity for work (whether total or partial, or both) of 104 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods. 25 30

[3] Schedule 6, Part 18

Insert after clause 1:

2 Regulations to modify or disapply 1996 amendments in relation to coal miners

- (1) In this clause: 5
- the 1996 amendments* means the amendments made to the *Workers Compensation Act 1987* by the *WorkCover Legislation Amendment Act 1996* except the amendments made by Schedule 1.3 (Journey claims) to that Act.
- (2) The regulations may make provision for or with respect to either or both of the following: 10
- (a) modifying any of the 1996 amendments in their application to or in respect of workers employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies, 15
- (b) exempting any such workers from the operation of any of the 1996 amendments.

1.19 Amendments—hearing loss claims

[1] Section 69A No compensation for less than 6% hearing loss

Omit section 69A (2). 20

[2] Section 69A (3)

Omit “or further loss” wherever occurring.

[3] Section 69A (3)

Omit “or that further loss reaches 5%”.

[4] Section 69A (4) (c) and (d)

Omit the paragraphs. Insert instead:

- (c) The worker suffers a further hearing loss of 5%.
The worker is entitled in the usual way to
compensation for the 5% further loss because the
6% threshold has already been passed (the total
loss is now 13%).

5

[5] Section 69B Employer's responsibility to pay for hearing loss tests

Omit "or further loss" wherever occurring in section 69B (1).

10

[6] Section 69B (1) (c)

Omit "(being hearing loss for which the worker has not received compensation under section 66)".

[7] Section 69B (1) (d)

Omit the paragraph.

15

[8] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities)

Insert at the end of clause 9:

- (4) The amendments made to sections 69A and 69B by the
WorkCover Legislation Amendment Act 1996 are taken
to have had effect on and from the commencement of
those sections.

20

1.20 Amendments—clarifications and miscellaneous amendments

[1] Section 94A Insurers to give notice and reasons when liability disputed

Insert at the end of section 94A (3): 5

The regulations may require an insurer to give a copy of
a notice under this section to the claimant's employer.

[2] Section 117 Regulations fixing maximum costs recoverable by legal practitioners

Omit "medical opinions" from section 117 (1) (b). 10
Insert instead "medical reports (including certificates)".

[3] Section 117 (3)

Omit "any report".
Insert instead "any medical report (including any certificate)".

[4] Section 118 Regulations fixing maximum fees recoverable by medical practitioners for medico-legal services 15

Omit "medical opinion or certificate" from section 118 (1) (a).
Insert instead "medical report (including any certificate)".

[5] Section 118 (3)

Insert after section 118 (2): 20

- (3) Regulations under this section can fix costs and amounts
by reference to costs and amounts fixed by regulations
under the *Legal Profession Act 1987*.

[6] Section 122 Solicitor/client costs in compensation proceedings

Insert after section 122 (6):

- (7) A reference in this section to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

5

[7] Section 152A Return-to-work plans for injured workers

Insert "or any such plan" after "section" in section 152A (3) (b).

[8] Section 270 Worker's right to information

Omit "refuse" from section 270 (2) (a). Insert instead "fail".

[9] Schedule 6 Savings, transitional and other provisions, Part 11 Provisions relating to proceedings before Commissioners and the Compensation Court

10

Omit "the insertion" from clause 1.
Insert instead "the commencement".

[10] Schedule 6, Part 11

15

Insert after clause 2:

3 Restrictions on commencement of proceedings

The provisions of Division 3A of Part 4 (sections 106D–106F) extend to apply in respect of an injury received before the commencement of that Division, but do not apply in respect of court proceedings pending or determined as at that commencement.

20

[11] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of the list of Acts in clause 1 (1):

WorkCover Legislation Amendment Act 1996

25

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Compensation Court Act 1984 No 89

Section 14A Medical referees

Insert at the end of section 14A (2): 5

The Chief Judge is to consult concerning proposed appointments of medical referees with such employer and employee organisations as the Minister may nominate from time to time or, in the absence of any such nomination, as the Chief Judge considers appropriate. 10

2.2 Construction Safety Act 1912 No 38

[1] Section 17A Riggers, divers, powdermen and certain other tradespersons

Insert after section 17A (2) (c): 15

(d) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person if the Authority is satisfied that the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence). In this paragraph, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*. 20 25

[2] Section 17A (5AA)

Omit "may suspend". Insert instead "may, at any time, suspend".

[3] Section 17A (5AA)

Insert at the end of section 17A (5AA):

If the Authority is satisfied that the holder of a
powderman's certificate of competency who has been
served with a notice under subsection (5) has a history of
violence or threats of violence (whether or not the person
has been convicted of any offence involving violence)
the Authority may, at any time, suspend the certificate of
competency pending the determination of the matter by
the Authority under this subsection.

5

10

In this subsection, **violence** includes behaviour referred
to in section 562AB (Stalking, intimidation with intent to
cause fear for personal safety) of the *Crimes Act 1900*.

2.3 Dangerous Goods Act 1975 No 68

**[1] Section 27A Commissioner of Police to report on explosives
licences and permits**

15

Insert after section 27A (2) (d):

(d1) whether the applicant has a history of violence or
threats of violence, with **violence** including
behaviour referred to in section 562AB (Stalking,
intimidation with intent to cause fear for personal
safety) of the *Crimes Act 1900*,

20

(d2) whether there is an apprehended violence order
under Part 15A of the *Crimes Act 1900* in force
with respect to the applicant,

25

[2] Section 28A

Insert after section 28:

**28A Special provision for suspension or cancellation of
explosives licences and permits**

(1) This section applies to licences and permits to which
section 27A applies.

30

- (2) If the Authority thinks that the holder of a licence or permit cannot be trusted to have access to explosives because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence), the Authority may, at any time, by notice in writing served on the holder require the holder to appear before the Authority at a time and place specified in the notice to show cause why the licence or permit should not be cancelled. The Authority may also, at any time, suspend the licence or permit pending determination of the matter under subsection (3). 5 10
- (3) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of the licence or permit, the Authority may cancel the licence or permit. 15
- (4) If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a licence or permit to which this section applies (whether or not the person has been served with a notice under subsection (2)) the Authority may, at any time, suspend the licence or permit for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force. 20
- (5) This section does not limit any powers of the Authority under section 28 with respect to a licence or permit to which this section applies. 25
- (6) In this section **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*. 30

2.4 Industrial Relations Act 1996 No 17

Section 197A

Insert after section 197:

197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation	5
(1) This section applies to the decision of a member of the Commission or of a Local Court constituted by an Industrial or other Magistrate to acquit a person of an offence against the occupational health and safety legislation.	10
(2) This section applies to such a decision only if proceedings for the offence were instituted by an inspector appointed under that legislation or with the consent of the Minister or other officer authorised by that legislation to give such a consent.	15
(3) An appeal lies to the Full Bench of the Commission in Court Session against a decision to which this section applies. The appeal is not limited to a question of law.	
(4) The appeal may be made by the Attorney General, the Minister, the Director of Public Prosecutions or the prosecutor in the proceedings in which the decision appealed against was made.	20
(5) An appeal may be made within 21 days after the date of the decision appealed against or within such further time (not exceeding 3 months after that date) as the Full Bench or the Commission constituted by a Presidential Member allows. Further time may be allowed, either before or after the end of that 21-day period.	25
(6) Section 191 applies to an appeal under this section.	
(7) On an appeal under this section, the Full Bench may:	30
(a) dismiss the appeal, or	
(b) set aside the decision appealed against and make a decision in the matter in accordance with law (including the conviction and sentence of the defendant for the offence charged).	35

- (8) If the Full Bench on appeal convicts the defendant of the offence, the maximum penalty that the Full Bench may impose for the offence is the maximum penalty that the court that acquitted the defendant could have imposed for the offence. 5
- (9) This section has effect despite anything to the contrary in section 196 or 197.
- (10) In this section:
occupational health and safety legislation means the *Occupational Health and Safety Act 1983*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act. 10
- (11) This section does not apply to a decision made before the commencement of this section. 15

2.5 Occupational Health and Safety Act 1983 No 20

[1] Section 21B Plant or premises involved in dangerous occurrence

Omit "the first working day (that is, any day except a Saturday, Sunday or public holiday) after" from section 21B (5). 20
Insert instead "the day after".

[2] Section 31KA

Insert after section 31K:

31KA Power of inspectors to obtain information, documents and evidence 25

- (1) An inspector may, by notice in writing served on a person who is, on reasonable grounds, believed by the inspector to be capable of giving information, producing documents or giving evidence in relation to a possible contravention of the relevant legislation require the person to do any one or more of the following things: 30
 - (a) to give an inspector, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and

	within the time and in the manner specified in the notice, any such information of which the person has knowledge,	
	(b) to produce to an inspector, in accordance with the notice, any such documents,	5
	(c) to appear before an inspector at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.	
(2)	A notice under this section must contain a warning that a failure to comply with the notice is an offence.	10
(3)	An inspector may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.	
(4)	An inspector may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an inspector to be a true copy.	15 20
(5)	A certified copy provided under subsection (4) is receivable in all courts as if it were the original.	
(6)	Until a certified copy of a document is provided under subsection (4), the inspector who has possession of the document must, at such times and places as the inspector thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.	25
[3]	Section 31M	30
	Omit the section. Insert instead:	
	31M Protection from incrimination	
(1)	A person is not excused from making a statement, giving or furnishing information or evidence or producing a document in accordance with a requirement under this Division on the ground that the statement, information,	35

document or evidence may tend to incriminate the person.

- (2) However, any statement, information, document or evidence obtained from a person pursuant to a requirement under this Division is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 31N) if: 5
- (a) the person claims before making the statement or giving, furnishing or producing the information, document or evidence that it might tend to incriminate the person, or 10
- (b) the person's entitlement to make a claim of the kind referred to in paragraph (a) was not drawn to the person's attention before the statement was made or the information, document or evidence was given, furnished or produced. 15
- (3) Subsection (2) does not prevent the admission in evidence in proceedings against a body corporate of any statement, information, document or evidence obtained pursuant to a requirement under this Division from a person as a competent officer of the body corporate. 20

[4] Section 31N Offence: obstruction and compliance

Omit section 31N (e). Insert instead:

- (e) in purported compliance with a requirement under this Division, or in answer to a question of an inspector asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular. 25
30

[5] Section 31U Review of notices

Omit section 31U (4). Insert instead:

- (4) The WorkCover Authority is to review a notice that is the subject of a duly made application for review. The notice is stayed (unless it is a prohibition notice) from 35

when the application for review is received by the WorkCover Authority until the WorkCover Authority gives notice to the applicant of the result of the review. If the notice is a prohibition notice it can be stayed as provided by section 31UA.

5

[6] Section 31UA

Insert after section 31U:

31UA Application to Industrial Magistrate for stay of prohibition notice

- (1) If a person duly applies under section 31U for review of a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate for a stay of the notice. 10
- (2) A stay may be granted for such period as the court considers appropriate but not so as to extend past the time when notice of the result of the review is given to the applicant by the WorkCover Authority. 15
- (3) A stay may be granted on such conditions as the court considers appropriate and may be revoked or amended by the court. 20

2.6 WorkCover Legislation Amendment Act 1995 No 89

[1] Schedule 1 Amendment of Workers Compensation Act 1987

Omit so much of item [6] as inserts section 11A (2) of the *Workers Compensation Act 1987*.

[2] Schedule 1 [43]

25

Omit so much of the item as inserts section 94A (5) and (6) of the *Workers Compensation Act 1987*.

[3] Schedule 1 [49], [50]

Omit the items.

[4] Schedule 3 Amendment of Compensation Court Act 1984

Omit items [1] and [2].

[5] Schedule 3 [29]

Omit so much of the item as inserts clause 8 of Part 4 of Schedule 4 to the *Compensation Court Act 1984*.

5

2.7 WorkCover Administration Act 1989 No 120

Section 19 Payments into and from Fund

Insert after section 19 (2) (b):

(b1) expenditure incurred by the Department of Industrial Relations in relation to the exercise (whether before or after the commencement of this paragraph) of the functions of conciliation officers under the *Workers Compensation Act 1987* by conciliation officers who are officers of that Department, including the remuneration payable to those officers, 10 15

(b2) the remuneration (including allowances) of conciliation officers appointed under section 96 (1A) of the *Workers Compensation Act 1987*,

2.8 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83

20

[1] Section 23 Definitions

Insert in alphabetical order:

relevant journey, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity. 25 30

[2] Section 24 Injuries to which this Part applies

Omit section 24 (1) (b). Insert instead:

- (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.

[3] Sections 28A and 28B

5

Insert after section 28:

28A Compensation for damage to personal effects, vehicles and other things

- (1) Compensation is payable under this Part in respect of:

- (a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and 10
15
- (b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and 20
- (c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker. 25

- (2) The amount of the compensation payable under this section is such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss. 30

- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion. 5
- (4) Compensation is not payable under this section in respect of any loss: 10
- (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or
- (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source. 15
- (6) In this section *personal effects* does not include personal effects referred to in section 28.
- 28B Prohibition on increased premium under motor vehicle insurance policy** 20
- (1) In this section:
- authorised activity damage* means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5). 25
- insurance policy* means policy of insurance in respect of damage to or destruction or loss of a vehicle. 30
- insurer* means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

-
- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage. 5
Maximum penalty: 5 penalty units. 10
- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it. 15
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.
- [4] Section 32 Application of Principal Act**
- Omit "section 52" from section 32 (1) (c). 20
Insert instead "sections 52, 52A and 52B".
- [5] Schedule 1 Transitional and other provisions**
- Omit the heading to the Schedule. Insert instead:
- Schedule 1 Savings and transitional provisions** 25
(Section 35)
- Part 1 General**
- 1A Savings and transitional regulations**
- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts: 30
WorkCover Legislation Amendment Act 1996
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 5
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication. 10

Part 2 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

- [6] **Schedule 1, Part 3** 15
- Insert after clause 2:

Part 3 WorkCover Legislation Amendment Act 1996

3 Operation of amendments

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section. 20

2.9 Workers' Compensation (Dust Diseases) Act 1942 No 14

- [1] **Section 6 Constitution of Fund** 25

Insert "and" at the end of each of paragraphs (a) and (b) in section 6 (1) and insert at the end of section 6 (1) (d):

, and

- (e) all amounts that immediately before the commencement of this paragraph stood to the credit of the Dust Diseases Reserve Fund, and 30

-
- (f) all amounts contributed by insurers under subsection (6) or (7D).

[2] Section 6 (7C)

Omit the subsection. Insert instead:

- (7C) The WorkCover Authority is to pay the contributions paid by insurers under subsections (6) and (7) to the board for payment into the Fund.

5

[3] Section 6 (7D)

Omit "Dust Diseases Reserve".

[4] Section 8 Certificate of medical authority and rates of compensation

10

Omit "sections 51 and 52" from section 8 (3) (b).
Insert instead "sections 51, 52, 52A and 52B".

Second print



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of other Acts	2

Schedules

1 Amendment of Workers Compensation Act 1987	3
2 Amendment of other Acts	54

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

Act No , 1996

An Act to amend the *Workers Compensation Act 1987* to make further provision with respect to maximum workers compensation benefits, journey claims, deductions for previous injuries, weekly payments of compensation, conciliation of disputes, and in other respects; to amend certain other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *WorkCover Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

4 Amendment of other Acts

10

Each Act set out in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

1.1 Amendments—new conciliation arrangements

[1] Section 3 Definitions

5

Insert the following definitions in section 3 (1) in alphabetical order:

existing claim has the meaning given by section 87D.

new claim has the meaning given by section 87D.

Principal Conciliator means the Principal Conciliator appointed under section 87F.

10

[2] Section 3 (6)

Insert after section 3 (5):

- (6) Notes included in the text of this Act do not form part of this Act.

[3] Part 4, Division 1A

15

Insert before Division 1 of Part 4:

Division 1A Special conciliation provisions for new claims

87D Definitions

- (1) In this Act:

20

existing claim means, subject to any regulations under this section that modify this definition:

- (a) any claim for compensation made before the commencement of this Division (as inserted by the *WorkCover Legislation Amendment Act 1996*), and
- (b) any claim for compensation made after that commencement that is a further claim in respect of an injury for which a claim was made before that commencement.

25

new claim means any claim for compensation that is not an existing claim.

- (2) The regulations can modify the definition of ***existing claim*** in this section and for that purpose can contain provisions of a savings or transitional nature with respect to the application of provisions of this Part to and in respect of claims that as a result of any such regulations become or cease to be existing claims. 5
- (3) In modifying the definition of ***existing claim***, the regulations can even provide that no claims are existing claims (with the result that all claims will be dealt with as new claims), or alternatively can provide that all claims are existing claims (with the result that no claims will be dealt with as new claims). 10

87E Conciliation officers for new claims or existing claims 15

- (1) A person employed or appointed as a conciliation officer may be so employed or appointed as a conciliation officer for new claims (a ***new claims conciliation officer***) or for existing claims (an ***existing claims conciliation officer***). If a person is not employed or appointed as a new claims conciliation officer, the person is taken to have been employed or appointed as an existing claims conciliation officer. 20
- (2) New claims conciliation officers may be referred to as conciliation officers or as conciliators. 25

87F Principal Conciliator for new claims

- (1) Of the persons employed as new claims conciliation officers one is to be appointed by the head of the Department of Industrial Relations as the Principal Conciliator. When a person is appointed as the Principal Conciliator, any previous appointment of a person as the Principal Conciliator ceases to have effect. 30
- (2) The Principal Conciliator has and may exercise in respect of new claims all the functions of the Senior Conciliation Officer, in place of the Senior Conciliation Officer. 35

- (3) The Principal Conciliator can delegate to any new claims conciliation officer any of the Principal Conciliator's functions under this Part, including any function that the Principal Conciliator has under subsection (2), but cannot delegate this power of delegation.

5

[4] Section 96 Conciliation officers

Omit "Officers of the Authority" from section 96 (1).
Insert instead "Officers of the Authority or of the Department of Industrial Relations".

[5] Section 96 (4)

10

Insert after section 96 (3):

- (4) In the month of May in each year, the Minister is to prepare and forward to the WorkCover Authority an estimate of the expenditure to be incurred by the Department of Industrial Relations in relation to the exercise of the functions of conciliation officers under this Act by conciliation officers who are officers of that Department, including the remuneration payable to those officers.

15

[6] Section 97 Referral of disputes for conciliation

20

Insert at the end of section 97:

Note. Disputes involving new claims are to be referred to the Principal Conciliator, not the Senior Conciliation Officer.

- (3) The validity of a referral under this section is not affected by the incorrect referral of a dispute to the Principal Conciliator or the incorrect referral of a dispute to the Senior Conciliation Officer, and either can refer a dispute referred to him or her to the other.

25

[7] Section 98A Power of conciliation officer to require information

Insert after section 98A (5):

- (6) The regulations may make provision for or with respect to any of the following matters:
 - (a) excepting specified kinds of information or documents from the operation of this section, 5
 - (b) the circumstances in which information or documents furnished or produced to a conciliation officer under this section may or may not be furnished or produced by the conciliation officer to any other party to the dispute. 10

[8] Section 98D Certificates as to conciliation of disputes

Insert after section 98D (2):

- (2A) A conciliation officer is to issue a conciliation certificate for a dispute at the request of the Senior Conciliation Officer. 15
- (2B) The Senior Conciliation Officer may, either on the recommendation of the conciliation officer or on his or her own initiative, refer a conciliation certificate to the Registrar of the Compensation Court to form part of any file of the Court on proceedings commenced, or that may later be commenced, in relation to the dispute concerned. 20

[9] Section 98D (3)

Re-number paragraph (e) of section 98D (3) as paragraph (f) and omit "in the opinion of the conciliation officer" from that paragraph. 25

[10] Section 98D (3) (e)

Insert after section 98D (3) (d):

- (e) if conciliation was unsuccessful (wholly or partially) the reasons for that, 30

[11] Sections 98E, 98F

Insert after section 98D:

98E Time within which disputes must be referred to conciliation

The regulations may make provision for or with respect to limiting the time within which a dispute in respect of a new claim can be referred for conciliation under this Division. 5

98F Agreements arising from conciliation

- (1) If the conciliation of a dispute under this Division gives rise to an agreement between the parties, the conciliation officer may assist the parties in drafting written terms of agreement or in completing any approved standard form of agreement. 10
- (2) If the agreement relates to compensation under section 66 or 67, the conciliation officer can refer the agreement to the Senior Conciliation Officer for forwarding on to the Authority to be registered under section 66A. An application for registration of the agreement under section 66A is then taken to have been made by a party to the agreement. 15
20
- (3) If the agreement relates to other compensation, it may, with the consent of the parties, be registered by the Authority (in the case of existing claims) or by the head of the Department of Industrial Relations (in the case of new claims). 25
- (4) The following are examples of the provisions that an agreement arising from conciliation of a dispute can contain:
 - (a) provision for the employer or insurer to continue to pay compensation for a specified minimum period subject to compliance by the worker with specified conditions, 30

- (b) provisions to cover matters such as the supply of medical certificates certifying as to incapacity and requirements for participation by the worker in the employer's workplace rehabilitation program, rehabilitation training or other specified activities designed to assist the worker to return to work, 5
- (c) provisions designed to avoid or minimise further disputes between the parties, such as provisions requiring the parties to communicate with the conciliation officer concerning any dispute or potential dispute, 10
- (d) provision for a review of the agreement at a specified time, either by the parties alone or in consultation with the conciliation officer,
- (e) provisions designed to deal with any further disputes that might arise, so as to resolve them quickly while keeping costs to a minimum. 15

[12] Section 100A Proceedings before conciliation officers

Insert "in respect of an existing claim" after "dispute" wherever occurring in section 100A (2) and (3). 20

[13] Section 100A (2A)

Insert after section 100A (2):

- (2A) A person who is a party to any dispute in respect of a new claim is entitled to be represented by a barrister or solicitor, and by an agent of such a class as may be prescribed by the regulations. The conciliation officer may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party. 25
30

[14] Section 100A (3C)

Insert after section 100A (3B):

- (3C) A conciliation officer may, subject to any general directions by the Senior Conciliation Officer:

-
- (a) hold a conciliation conference with all relevant parties in attendance and, if the conciliation officer considers appropriate, with the employer (in the employer's own right, even if the employer is represented by an insurer) and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them, and 5
 - (b) in a case where the employer concerned is represented by an insurer—nevertheless communicate directly with the employer about the provision of suitable employment for the worker or any other matter connected with the dispute. 10

[15] Section 100A (7)

Insert after section 100A (6): 15

- (7) An agreement that arises from the conciliation of a dispute under this Division is not admissible in proceedings before the Compensation Court, except:
 - (a) when the parties to the agreement otherwise agree, or 20
 - (b) in such circumstances as the regulations may specify.

[16] Section 102 Existing claims for weekly payments—commencement of payments

Insert at the end of section 102 (1): 25

This section does not apply to new claims.

[17] Section 102A

Insert after section 102:

102A New claims for weekly payments—commencement of payments 30

- (1) This section applies only to new claims.
- (2) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.

- (3) If the person on whom a claim is made disputes liability to make the weekly payments within 21 days after the claim for compensation is duly made, the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) does not apply. 5

Note. If liability is disputed the worker can refer the dispute to conciliation. See section 106FB.

- (4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (2) and (3) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends: 10

- (a) 42 days after the claim for compensation is duly made, or
(b) when the person ceases to have that reasonable excuse, 15

whichever is earlier. 20

- (5) An employer has such a reasonable excuse if:
(a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and 25
(b) the employer has complied with all reasonable requests of the insurer with respect to the claim.

- (6) This section ceases to apply if the claim for compensation is withdrawn.

[18] Section 103 Offences—commencement of weekly payments 30

Insert “or 102A” after “102” in section 103 (1).

[19] Section 103A Disputes about continuation of weekly payments to be referred to conciliation within 21 days

Insert “This section does not apply if the claim concerned is a new claim.” after “Division 2.” in section 103A (1). 35

[20] Section 106CA

Insert before section 106D:

106CA Division applies only to existing claims

This Division applies only to court proceedings in respect of an existing claim.

5

[21] Part 4 Division 3B

Insert after Division 3A of Part 4:

Division 3B Restrictions on commencing court proceedings—new claims

106FA Division applies only to new claims

10

This Division applies only to court proceedings in respect of a new claim.

106FB Restrictions on commencing court proceedings about weekly payments

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 2 and either:
- 15
- 20
- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) the conciliation officer has given a notification under section 104 (3) in respect of the dispute, or
- (c) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- 25
- whichever happens first.
- (2) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 2 until:
- 30

- (a) the person on whom the claim is made has disputed liability to make the payments, or
 - (b) the time within which the person on whom the claim is made is required under section 102A to commence those payments has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute), 5
- whichever happens first.

Note. Section 102A allows up to 42 days for the commencement of weekly payments of compensation. 10

- (3) A worker cannot commence court proceedings in respect of **related compensation** until subsection (1) allows the commencement of proceedings in respect of the weekly payments of compensation concerned. Related compensation is compensation under Division 3 of Part 3 that relates to the incapacity for work to which the weekly payments of compensation relate. 15
- (4) This section does not prevent the commencement of court proceedings in any of the following circumstances:
 - (a) if the proceedings concern an application for a determination under section 53, 20
 - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,
 - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of this Act, 25
 - (d) any circumstances prescribed by the regulations.

106FC Restrictions on commencing court proceedings for lump sum compensation 30

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 unless a dispute about that compensation has been referred for conciliation under Division 2 and either:
 - (a) the conciliation officer has issued a certificate of conciliation outcome, or 35

-
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- whichever happens first.
- (2) A worker cannot refer a dispute about compensation under section 66 for conciliation under Division 2 until: 5
- (a) 12 weeks after the claim for the compensation is duly made, or
- (b) the person on whom the claim is made disputes liability to pay the compensation, 10
- whichever happens first.
- (3) If the person on whom a claim for compensation under section 66 is made has, within 12 weeks after that claim is duly made, duly applied under section 131 for reference of the matter to a medical panel, the worker can commence court proceedings in respect of that compensation 14 days after the panel has given its certificate under that section even if subsection (1) would otherwise prevent commencement of proceedings at that time. 15 20
- (4) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss or further loss, or for related compensation, until this section allows the commencement of proceedings in respect of compensation under section 66 for the loss or further loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss, further loss or pain and suffering. 25
- (5) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66, the proceedings are to be adjourned until: 30
- (a) 12 weeks after the claim was amended, or

- (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates, 5
whichever is later.
- (6) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (5). 10
- (7) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3). 15
- (8) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim. 20
25
- (9) This section does not prevent the commencement of court proceedings in any circumstances prescribed by the regulations. 30

106FD Restrictions on commencing court proceedings about hospital, medical and other expenses

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses) or Division 5 (Compensation for property damage) of Part 3 unless a dispute about that compensation has been referred for conciliation under Division 2 and either: 35

-
- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation, 5
- whichever happens first.
- (2) A worker cannot refer a dispute about compensation under Division 3 or 5 of Part 3 for conciliation under Division 2 until:
- (a) 28 days after the claim for compensation is duly made, or 10
- (b) the person on whom the claim is made disputes liability to pay the compensation,
- whichever happens first.
- (3) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 and are commenced in compliance with section 106FB or 106FC (whichever is appropriate). 15 20
- (4) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.
- (5) This section applies only in respect of new claims for compensation that are of a class prescribed by the regulations as subject to this section. If a new claim for compensation under Division 3 or 5 of Part 3 is not one in respect of which this section applies, section 106F applies in respect of the claim as if it were an existing claim. 25 30

106FE Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to: 35

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106FA, 106FB or 106FC applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and 5
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 10

[22] Section 107A

Omit the section. Insert instead:

107A Authority or DIR may intervene in proceedings 15

- (1) The Authority or the head of the Department of Industrial Relations (*the DIR*) has a right to be heard in any proceedings before the Compensation Court.
- (2) The Authority or the head of the DIR may, for that purpose, be represented by a barrister or solicitor or an officer of the Authority or the DIR or by any other person. 20
- (3) In any such proceedings the Authority or the head of the DIR may apply for an order for which any party may apply in those proceedings. 25

[23] Section 119 Limit on recovery of costs unreasonably incurred

Insert after section 119 (2):

- (2A) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 98D certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate. 30

[24] Schedule 2 Provisions relating to appointed conciliation officers

Omit "Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*." from clause 3.

[25] Schedule 6 Savings, transitional and other provisions, Part 10 Provisions relating to conciliation officers and weekly payments of compensation

5

Insert after clause 4:

5 New conciliation arrangements—WorkCover Legislation Amendment Act 1996

10

Amendments made by the *WorkCover Legislation Amendment Act 1996* do not affect the continuity of employment or appointment of conciliation officers employed or appointed as such immediately before the commencement of those amendments.

15

1.2 Amendments—employment required to be substantial contributing factor

[1] Section 9A

Insert after section 9:

9A No compensation payable unless employment substantial contributing factor to injury

20

(1) No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury.

(2) The following are examples of matters to be taken into account for the purposes of determining whether a worker's employment was a substantial contributing factor to an injury (but this subsection does not limit the kinds of matters that can be taken into account for the purposes of such a determination):

25

30

- (a) the time and place of the injury,
 - (b) the nature of the work performed and the particular tasks of that work,
 - (c) the duration of the employment,
 - (d) the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she has not been at work or had not worked in that employment, 5
 - (e) the worker's state of health before the injury and the existence of any hereditary risks, 10
 - (f) the worker's lifestyle and his or her activities outside the workplace.
 - (3) A worker's employment is not to be regarded as a substantial contributing factor to a worker's injury merely because of either or both of the following: 15
 - (a) the injury arose out of or in the course of, or arose both out of and in the course of, the worker's employment,
 - (b) the worker's incapacity for work, loss as referred to in Division 4 of Part 3, need for medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service as referred to in Division 3 of Part 3, or the worker's death, resulted from the injury. 20 25
 - (4) This section does not apply in respect of an injury to which section 10, 11 or 12 applies.
- [2] Section 11A No compensation for psychological injury caused by reasonable actions of employer**
- Omit section 11A (1). Insert instead: 30
- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the

employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.

- [3] Section 11A (5)** 5
Omit the subsection.
- [4] Section 11A (6)**
Insert at the end of section 11A (6):
This section does not affect section 9A (No compensation payable unless employment substantial contributing factor to injury). 10
- [5] Section 11A (7)**
Omit the subsection. Insert instead:
(7) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 92) use, for the purpose of describing the worker's condition, accepted medical terminology and not only terminology such as "stress" or "stress condition". 15
20
- [6] Section 11A (8)**
Insert "then (unless the insurer or self-insurer waives that requirement)" after "deficient claim".
- [7] Section 11A (8) (a)** 25
Insert "or 102A" after "102".
- [8] Section 16 Aggravation etc of diseases—employer liable, date of injury etc**
Omit "contributing factor" wherever occurring.
Insert instead "substantial contributing factor". 30

[9] Section 19 Diseases deemed work related

Omit "contributing factor" from section 19 (1) (b).
Insert instead "substantial contributing factor".

[10] Section 92 Making of claim for compensation

Insert after section 92 (1B):

- 5
- (1C) The medical certificate required to accompany a claim for weekly payments of compensation must include a statement of the medical practitioner's opinion (however expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor. 10
- (1D) If a claim is deficient because subsection (1C) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement): 15
- (a) the claim is not considered to have been duly made for the purposes of section 102 or 102A until subsection (1C) is complied with, and 20
- (b) court proceedings cannot be commenced in respect of the claim until subsection (1C) is complied with. 25
- (1E) All claims for compensation under section 66 and 67 in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later. 30

[11] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation

Insert after clause 8:

9 Requirement that employment be substantial contributing factor

5

- (1) Section 9A of this Act, as inserted by the *WorkCover Legislation Amendment Act 1996*, does not apply to injuries received before the commencement of that section.
- (2) The amendments made to section 11A, 16, 19 and 92 of this Act by Schedule 1.2 to the *WorkCover Legislation Amendment Act 1996* do not apply in respect of injuries received before the commencement of the amendments, except as provided by subclause (3). 10
- (3) Section 92 (1C) and (1D) extend to apply to an injury that is a psychological injury within the meaning of section 11A that was received before the commencement of those subsections and after the commencement of section 11A. 15
- (4) In a case where section 16 deems an injury to have happened within 12 months after the commencement of section 9A, sections 16 (2) and 68B (3) are, in their application in respect of any period of employment before the commencement of section 9A, to be read as if a reference in those provisions to employment that was a substantial contributing factor were a reference to employment that was a contributing factor (whether or not a substantial contributing factor). 20 25

1.3 Amendments—journey claims

[1] Section 10 Journey claims

30

Omit section 10 (1A). Insert instead:

- (1A) Subsection (1) does not apply if the personal injury is attributable to the serious and wilful misconduct of the worker.

WorkCover Legislation Amendment Bill 1996 (No 2)

Schedule 1 Amendment of Workers Compensation Act 1987

[2] Section 10 (1B)

Omit "to have been caused by the fault of the worker".
Insert instead "to be attributable to the serious and wilful misconduct of the worker".

[3] Section 10 (1C)

5

Omit the subsection.

[4] Section 10 (6)

Omit the definition of *fault*.

**[5] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

10

Insert after clause 2 (2):

- (3) Section 10 of this Act continues to apply in respect of personal injury received by a worker before the commencement of the amendments made to that section by the *WorkCover Legislation Amendment Act 1996* as if those amendments had not been made.

15

**1.4 Amendments—reduction in maximum lump sum
compensation amounts**

[1] Section 66 Compensation for permanent injuries

Omit "\$132,300" from section 66 (1).
Insert instead "\$100,000".

20

[2] Section 66 (2)

Omit "\$160,950". Insert instead "\$121,000".

[3] Section 67 Compensation for pain and suffering

Omit "\$66,200" from section 67 (1).
Insert instead "\$50,000".

25

**[4] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert after clause 17:

- 18 Reduction in lump sum compensation amounts—1996 amendments** 5
- (1) Despite sections 66 (3) and 67 (6), the compensation payable under section 66 or 67 in respect of any injury received before the commencement of the amendment of those sections by the *WorkCover Legislation Amendment Act 1996* where no claim for compensation under either section 66 or 67 in respect of the injury was duly made by the worker before that commencement is to be calculated by reference to the requisite percentage of the amounts in force under the relevant section immediately after its amendment by that Act. 10 15
- (2) If proceedings are pending before the Compensation Court on a claim for compensation under section 66 or 67, a claim for that compensation is taken not to have been made before the commencement of the amendments to which this clause applies if: 20
- (a) no claim for that compensation was duly made before the commencement of those amendments, or
- (b) the worker did not, before the commencement of those amendments, give the employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation claimed. 25 30
- (3) If this clause results, in a particular case, in a greater amount of compensation being payable in that case than would have been the case in the absence of this clause, this clause does not apply in that particular case.

1.5 Amendments—discontinuation of weekly payments after 2 years

[1] Section 38A Determination of whether worker is seeking suitable employment

Insert “and section 52A (Discontinuation of weekly payments after 2 years)” after “section 38” in section 38A (1). 5

[2] Section 38A (4)

Insert “or to the discontinuation of weekly payments under section 52A” after “section 38”.

[3] Section 40A Assessment of incapacitated worker’s ability to earn 10

Insert “, and about the possible effects of section 52A on the worker” after “those entitlements” in section 40A (2).

[4] Sections 52A and 52B

Insert after section 52: 15

52A Discontinuation of weekly payments after 2 years

(1) Weekly payments of compensation in respect of incapacity for work are not payable for any period beyond the first 104 weeks of incapacity for work (whether total or partial, or a combination of both) in respect of which the worker has received or is entitled to receive weekly payments of compensation but only if one or more of the following paragraphs applies to the worker: 20

(a) the worker is partially incapacitated for work, is not suitably employed (within the meaning of section 43A, has not yet exhausted his or her entitlement to compensation under section 38 and is not seeking suitable employment (as determined in accordance with section 38A), 25
30

-
- (b) the worker has received weekly payments (including payments during rehabilitation training) under section 38 for the maximum total period under that section and has subsequently unreasonably refused an offer of suitable employment for which the worker received that training, 5
 - (c) the worker has received weekly payments under section 38 for the maximum total period under that section but has failed to obtain suitable employment solely because of the state of the labour market (rather than because of the effects of the worker's injury). 10
 - (2) Weekly payments of compensation do not cease to be payable pursuant to this section until the person liable to make the payments has given the worker at least 12 weeks notice (a *payment discontinuation notice*) of the person's intention to discontinue the payments under this section (even if this would result in the worker receiving the payments for more than 104 weeks). The regulations may provide that the requirements of this subsection do not apply in specified cases or classes of cases. 15
20
 - (3) The following requirements apply to a payment discontinuation notice:
 - (a) the notice must contain a statement of the grounds on which the notice is given (by reference to which of paragraphs (a), (b) and (c) of subsection (1) applies to the worker) and must inform the worker of action by the worker that is necessary to prevent the discontinuation of weekly payments, 25
30
 - (b) the notice is to be given to the worker personally or by post,
 - (c) the notice must contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers. 35
-

WorkCover Legislation Amendment Bill 1996 (No 2)

Schedule 1 Amendment of Workers Compensation Act 1987

- (4) The fact that the worker becomes temporarily totally incapacitated for work after service of the payment discontinuation notice does not prevent the discontinuation of weekly payments under this section.
- (5) The payment discontinuation notice can be given up to 12 weeks before the end of the 104 week period for which the worker has received or is entitled to receive weekly payments of compensation but cannot be given earlier than that. 5
- (6) Once a payment discontinuation notice is given, and so long as the worker has provided the worker's employer or the employer's insurer with a certificate by a medical practitioner specifying the expected duration of the worker's incapacity, the person paying the compensation must not discontinue payment, or reduce the amount, of the compensation during the period of incapacity so specified until the worker has received another 12 weeks of payments. This subsection does not apply to a reduction in weekly compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable (whether under section 38 or otherwise). 10 15 20
- (7) A payment discontinuation notice can be withdrawn at any time by notice given in writing to the worker by the person who gave the notice, and once withdrawn is taken never to have been given (for the purposes of the further operation of this section in relation to the cessation of weekly payments of compensation). This subsection does not prevent the giving of a further payment discontinuation notice. 25 30
- (8) In determining the period for which a worker has received or is entitled to receive weekly payments of compensation, separate periods during which the worker received or is entitled to receive those payments are to be aggregated. 35
- (9) The giving of a payment discontinuation notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

-
- (10) This section does not apply to a worker who is permanently and totally incapacitated for work and does not apply to compensation for an injury received by a person as a worker employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies.

5

52B Proceedings in Compensation Court on dispute about discontinuation of weekly payments after 2 years

- (1) The Compensation Court may, on the application of the worker made within 12 weeks after the payment discontinuation notice under section 52A is given to the worker, determine any dispute about the operation of that section. The regulations may make provision for modifying the operation of this subsection in its application to cases in which a payment discontinuation notice is not required to be given under section 52A.
- (2) The fact that proceedings are pending in the Compensation Court on an application under subsection (1) does not prevent the discontinuation of weekly payments of compensation in accordance with section 52A, subject to any order of the Compensation Court under this section.
- (3) When proceedings on a dispute are pending under subsection (1) before the Compensation Court, the worker may apply to the court for an interim award of weekly compensation pending determination of the dispute by the court.
- (4) The Compensation Court may make such an interim award only if satisfied that the worker is subject to hardship and there is likely to be an unusually long delay that is beyond the control of the worker (and the worker's representatives) until the hearing of the matter.
- (5) Any such interim award is to be made subject to the following conditions:

10

15

20

25

30

- (a) the worker must supply to the worker's employer or another specified person from time to time medical certificates relating to the incapacity for work to which the award relates,
 - (b) if the worker is partially incapacitated for work and is not suitably employed (within the meaning of section 43A) and has not yet exhausted the worker's entitlement to compensation under section 38, the worker must take steps to obtain suitable employment for the purposes of section 38 (as determined in accordance with section 38A). 5 10
- (6) Subject to any further order of the Compensation Court, interim payments of compensation under this section may be suspended while the worker is in breach of any conditions of the interim award or is guilty of unreasonable delay in taking some step in the proceedings on the dispute. 15
- (7) The Compensation Court can make a determination under this section whether or not at the time in respect of which the determination is made the worker is actually entitled to receive any weekly payment for incapacity or would be so entitled but for the operation of section 52A. 20
- (8) If the Compensation Court subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Court: 25
 - (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and 30
 - (b) orders the worker or other person to refund those payments or a specified part of those payments.
- (9) This section does not affect the recovery of weekly payments under section 58. 35

**[5] Schedule 6 Savings, transitional and other provisions, Part 4
Provisions relating to weekly payments of compensation**

Insert after clause 13:

14 Discontinuation of weekly payments after 2 years

- | | | |
|-----|--|----------|
| (1) | Section 52A (as inserted by the <i>WorkCover Legislation Amendment Act 1996</i>) applies only to compensation payable in respect of an injury received after the commencement of that section, except as provided by this clause. | 5 |
| (2) | Section 52A extends to the compensation payable in respect of an injury received before that commencement (but after the commencement of this Act), subject to the following: | 10 |
| (a) | A payment discontinuation notice must not be given until the person liable to make the weekly payments has given the worker a notice (a <i>preliminary notice</i>) informing the worker about the existence and effect of section 52A and alerting the worker to the possible application of that section to the worker. | 15
20 |
| (b) | The earliest that a preliminary notice can be given to the worker is when the worker would still have to receive at least 52 weeks of weekly payments of compensation in order to bring the total number of weeks of weekly payments received by the worker (both before and after that commencement) to 104 (even if this would result in the worker receiving the payments for more than 104 weeks). | 25 |
| (c) | The preliminary notice is to contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self insurers. | 30 |
| (d) | The earliest that a payment discontinuation notice under section 52A (3) can be given to a worker is: | 35 |

-
- (i) after a period in respect of which the worker has received or is entitled to receive at least 40 weeks of weekly payments since the preliminary notice was given, and
 - (ii) at least 12 weeks before the end of the period of 104 weeks referred to in paragraph (b), 5

even if this would result in the worker receiving the payments for more than 104 weeks.
 - (e) For the purposes of the determination of the period of 104 weeks referred to in paragraphs (b) and (d), a worker is presumed to have received no more than 52 weeks of weekly payments before that commencement, with the result that if a worker received more than 52 weeks of weekly payments before that commencement the number of weekly payments in excess of 52 is to be disregarded. 10 15
 - (f) In the case of any period of incapacity for work to which clause 5A (2) or 5B (4) of Part 4 of Schedule 6 applies, section 52A (2) (a) is to apply as if it read as follows: 20
 - (a) the worker is partially incapacitated for work, is not suitably employed, has not yet exhausted his or her entitlement to compensation under section 38 and either: 25
 - (i) the worker's employer has not failed to provide suitable employment, or
 - (ii) the worker's employer has failed to provide suitable employment but the worker is not seeking suitable employment or receiving rehabilitation training, 30

as determined in accordance with section 38 as applicable to the case under clause 5A or 5B of Part 4 of Schedule 6. 35
 - (3) Section 52A does not apply in any of the following cases:

-
- (a) a case where the worker is receiving or entitled to receive weekly payments of compensation under a court award made before the commencement of that section,
 - (b) a case where court proceedings in which the worker is claiming weekly payments of compensation for which the employer or insurer has denied liability (including proceedings on an application for a determination under section 51 where there has been such a denial) are pending as at the commencement of that section, 5 10
 - (c) a case where court proceedings on an application for a determination under section 51 are pending as at the commencement of section 52A and the employer or insurer has not denied liability to make weekly payments of compensation, but only if approval under section 51 (1) (c) has been given before that commencement. 15
 - (4) The giving of a preliminary notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act. 20
 - (5) The regulations may provide that this clause or specified provisions of this clause do not apply in specified cases or classes of cases.
- 1.6 Amendments—deduction for previous injuries and pre-existing conditions and abnormalities 25**
- [1] Section 66A Registration of agreements for compensation**
- Omit “section 71” from section 66A (7).
Insert instead “this Part”.
- [2] Section 68 Proportionate loss of use 30**
- Insert after section 68 (3):
- (4) This section does not apply to a loss for which the Table to this Division provides a range of percentages.

Omit section 68A. Insert instead:

(1)	In determining the compensation payable under this Division for a loss, there is to be a deduction for any proportion of the loss that is due to any previous injury (whether or not it is an injury for which compensation has been paid or is payable under this Division) or that is due to any pre-existing condition or abnormality.	5 10
(2)	The proportion of a loss that is required to be deducted because of subsection (1) is the <i>deductible proportion</i> for that loss.	
(3)	If another loss (the <i>secondary loss</i>) was suffered by the worker as a consequence of a loss (the <i>primary loss</i>) for which there is a deductible proportion under subsection (1) and both losses resulted from the same injury, then in determining the compensation payable under this Division for the secondary loss there is to be a deduction of the proportion equal to the deductible proportion for the primary loss.	15 20
(4)	Subsection (3) does not limit the application of subsection (1) in relation to the secondary loss, with the result that there can be a deductible proportion for the secondary loss in its own right under subsection (1) (as well as under subsection (3) for the loss as a secondary loss).	25
(5)	This section is not limited to applying in respect of a loss of a proportion of a thing mentioned in the Table to this Division and applies even if the loss consists of the loss of all of such a thing.	30

-
- (6) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding litigation) that the deductible proportion (or the relevant part of it) is 10%, unless this assumption is at odds with the available evidence.

5
 - (7) The reference in subsection (6) to medical evidence is, in the context of court proceedings, a reference to medical evidence properly admitted in the proceedings and accepted or preferred by the court.

10
 - (8) Section 70 applies for the purpose of determining the extent (if any) that a worker's loss of hearing is due to presbycusis.

15

68B Deductions under section 68A—operation of sections 15, 16, 17 and 22

- (1) When determining the compensation payable for a loss for the purposes of the apportionment of liability under section 22, there is to be no deduction under section 68A for any proportion of the loss that is due to an injury in respect of which liability is to be apportioned (but without affecting any deduction under that section for any proportion of the loss that is due to any other injury or that is due to any pre-existing condition or abnormality).

20
25
- (2) When determining the compensation payable in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality).

30
35

- (3) When determining the compensation payable in a case in which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration or that is due to any pre-existing condition or abnormality). 5 10 15
- (4) When determining the compensation payable in a case in which section 17 applies (loss of hearing) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality). 20 25

[4] Section 71 Further loss of function—occupational diseases

Omit the section.

[5] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities) 30

Insert at the end of the Part:

19 Deduction for previous injuries and pre-existing conditions and abnormalities

- (1) The amendments made by the *WorkCover Legislation Amendment Act 1996* that amended sections 68 and 68A and repealed section 71 are taken to have had effect from the commencement of this Act, but not so as to affect: 35

-
- (a) any award of compensation made before the date of commencement of the amendments, or
 - (b) any compensation that a worker has received or agreed to receive before that date, or
 - (c) any award of, or compromise or settlement of a claim for, damages made before that date, or 5
 - (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before that date.
- (2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68A applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3. 10 15

1.7 Amendments—evidentiary value of medical panel reports and certificates

[1] Section 119 Limit on recovery of costs unreasonably incurred 20

Insert at the end of section 119 (2) (c):

, or

- (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by section 136 (1A)) and the court is of the opinion that the application was not reasonably justified. 25

[2] Section 131 Referral of medical disputes to referee or panel on application of worker or employer

Omit section 131 (5E).

[3] Section 136 Admissibility and evidentiary value of certificates and reports of medical referees and panels

5

Insert after section 136 (1):

(1A) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report. 10

(1B) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court. 15

[4] Schedule 6 Savings, transitional and other provisions, Part 12 Provisions relating to medical examinations and disputes

20

Insert after clause 7:

8 Evidentiary value of certificates and reports of medical panels

The amendments made to sections 119 and 136 of this Act by the *WorkCover Legislation Amendment Act 1996* extend to a certificate or report given after the commencement of those subsections in respect of an injury received before that commencement, but those amendments do not apply in respect of court proceedings pending or determined as at their commencement. 25
30

1.8 Amendments—claims excess payable by employers

[1] Section 160 Recovery of excess from employer

Omit the definition of *prescribed excess amount* from section 160 (1).

Insert instead:

5

prescribed excess amount in respect of a weekly compensation claim means an amount equal to the first 2 weeks of weekly payments of compensation on the claim.

[2] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurance

10

Insert after clause 18:

18A Claims excess—1996 amendment

(1) The amendment of section 160 of this Act by the *WorkCover Legislation Amendment Act 1996* applies in respect of injuries to workers that occurred after the commencement of the amendment. The section continues to apply (as if it had not been amended by that Act) in respect of injuries to workers that occurred before that commencement.

15

20

(2) A policy of insurance under this Act that relates to a period that includes any period after the commencement of the amendment referred to in subclause (1) is taken to include provision that gives effect to that amendment and subclause (1).

25

1.9 Amendments—marketing of legal and agency services

[1] Section 148B Definitions

Re-number paragraph (b) of the definition of *protected claim* as paragraph (c) and insert before that paragraph:

(b) a claim for the cost of provision of a hearing aid, and

30

[2] Section 148B (1A)

Insert after section 148B (1):

- (1A) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 148C does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct. 5

[3] Section 148HA

Insert after section 148H: 10

148HA Power to restrict or ban recovery of costs by solicitors

- (1) The Authority can by notification given to insurers and self-insurers direct that a solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with. 15
- (2) Such a notification cannot be given unless the Authority is satisfied that the solicitor or a member of the firm of solicitors or a voting shareholder of the solicitor corporation is a director of or has a financial interest in an agent and: 20
- (a) the agent has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5), or 25
- (b) a director of the agent or other person concerned in the management of the agent has persistently engaged in any such conduct. 30
- (3) Before the Authority gives such a notification it must give the solicitor, solicitor corporation or firm of solicitors a reasonable opportunity to make written submissions to the Authority on the matter.

-
- (4) The effect of a notification under this section is that the solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force. 5
- (5) A solicitor, solicitor corporation or firm of solicitors aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders. 10
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the solicitor, solicitor corporation or firm of solicitors concerned. 15
- (7) For the purposes of this section, a *financial interest* in an agent is a share in the capital of the business conducted by the agent or any entitlement to receive any income derived from the business or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise. 20
- [4] Section 148J Past conduct included in assessing persistent conduct** 25
- Omit "section 148H and 148I".
Insert instead "sections 148H, 148HA and 148I".
- [5] Section 148J (2)**
- Insert at the end of section 148J (2): 30
- For the purposes of section 148HA, at least one instance of the conduct must have occurred after the commencement of that section.

[6] Section 148L

Insert after section 148K:

148L Regulation of advertising

- (1) The regulations may make provision for or with respect
to regulating (including prohibiting) conduct by any 5
person (including advertising) that relates to the
marketing of services to be provided by a lawyer or
agent in connection with claims for compensation under
this Act.
- (2) A regulation may not be made under this section except 10
with the concurrence of the Minister administering the
Legal Profession Act 1987.
- (3) Any such regulation can impose a penalty not exceeding
200 penalty units for any contravention of the
regulations. 15

**[7] Schedule 6 Savings, transitional and other provisions, Part 9
Provisions relating to notice of injury and claims for
compensation**

Insert at the end of clause 6:

- (2) The amendment made by the *WorkCover Legislation* 20
Amendment Act 1996 to insert section 148B (1A) is
made for the purpose of the removal of doubt and
accordingly is taken to have had effect from the
commencement of that section as inserted by the
WorkCover Legislation Amendment Act 1995. 25

**1.10 Amendments—transfer of WorkCover Authority
functions to Public Trustee**

[1] Sections 29 and 30

Omit “the Authority” and “The Authority” wherever occurring.
Insert instead “the Public Trustee” and “The Public Trustee” 30
respectively.

[2] Section 31 Payment in respect of dependent children

Omit "to the Authority".

Insert instead "to the Public Trustee in trust".

[3] Section 31

Omit "by the Authority".

Insert instead "by the Public Trustee".

5

[4] Section 83 Manner of payment of compensation

Insert "or the Public Trustee" after "the Authority" in section 83 (7).

[5] Section 85 Payments to Public Trustee for benefit of beneficiary

10

Omit "to the Authority" where firstly occurring.

Insert instead "to the Public Trustee in trust".

[6] Section 85

Omit "the Authority" and "The Authority" wherever occurring (except where firstly occurring).

Insert instead "the Public Trustee" and "The Public Trustee" respectively.

15

[7] Section 86

Omit the section. Insert instead:

86 Public Trustee's powers of investment

20

- (1) All amounts held by the Public Trustee under this Act are to form part of the common fund under section 36A of the *Public Trustee Act 1913* and are available for investment as provided by that Act.

- (2) A power conferred by this Division on the Public Trustee to invest money for the benefit of a person includes a power to invest the money in any manner that the Public Trustee is authorised under the *Public Trustee Act 1913* to invest money held in trust by the Public Trustee. 5

[8] Section 87 Unclaimed money

Omit "the Authority" wherever occurring.
Insert instead "the Public Trustee".

**[9] Schedule 6 Savings, transitional and other provisions, Part 19
Miscellaneous provisions** 10

Insert after clause 5:

6 Transfer of functions from Authority to Public Trustee

- (1) In this clause:
- the Public Trustee amendments* means the amendments made by Schedule 1.10 to the *WorkCover Legislation Amendment Act 1996*. 15
- (2) An application made under section 29 or 30 of this Act to or by the Authority before the commencement of the Public Trustee amendments is to continue and be dealt with as if those amendments had not been made. 20
- (3) A decision of the Authority under section 29 is, after the commencement of the Public Trustee amendments, taken to be a decision of the Public Trustee.
- (4) All money and investments belonging to the common fund, Income Suspense Account or Investment Guarantee Account referred to in section 86 of this Act are to be transferred from the Authority to the Public Trustee, to form part of the common fund under section 36A of the *Public Trustee Act 1913*. 25

-
- (5) Compensation paid to the Authority under section 85 of this Act is after the commencement of the Public Trustee amendments taken to have been paid to the Public Trustee under that section. Anything done by the Authority under sections 85–87 is after the commencement of the Public Trustee amendments taken to have been done by the Public Trustee. 5
- (6) The Public Trustee amendments do not affect any liability of the Authority that arose before the commencement of those amendments or that arises after that commencement in respect of any act or omission by the Authority before that commencement. Any such liability remains a liability of the Authority and does not (as a result of those amendments) become a liability of the Public Trustee. 10 15

1.11 Amendment—rules and regulations with respect to medical evidence

Section 137 Rules of Court and regulations with respect to medical evidence

Insert “(including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report)” after “panels” in section 137 (b). 20

1.12 Amendments—making a claim for compensation

[1] Section 92 Making of claim for compensation

Omit section 92 (4B). Insert instead: 25

- (4B) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority. 30

[2] Section 92 (6)

Insert after section 92 (5):

- (6) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or occupational rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliation officer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.
- 5
10

1.13 Amendment—deemed employment of participants in workplace based training programs

15

Schedule 1 Deemed employment of workers

Insert after clause 17A:

18 Participants in training programs

- (1) The regulations may:
- (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and
- (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program.
- (2) A person who is a participant in a declared training program is for the purposes of this Act taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the
- 20
25
30

person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.

- (3) A payment that is declared by the regulations to be wages in respect of a participant in a declared training program is taken for the purposes of this Act to be the participant's wages in the employment by the person who provides the workplace based training. 5
- (4) Except to the extent that the regulations may otherwise provide, this clause does not apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause. 10

1.14 Amendment—penalty increase (requirement to keep register of injuries) 15

Section 90 Register of injuries

Omit "20 penalty units" from section 90 (5).
Insert instead "50 penalty units".

1.15 Amendments—misleading conduct by insurers and brokers 20

[1] Section 156A

Insert after section 156:

156A Misleading conduct by insurers and brokers with respect to business insurance 25

- (1) In this section:

broker means a person who is an insurance intermediary within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth.

insurer means a person who carries on insurance business as defined in the *Insurance Act 1973* of the Commonwealth.

- (2) An insurer or broker must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause an employer to believe that the insurance is comprehensive for business needs, unless:
- (a) the insurance includes the insurance required by this Act, or
- (b) the representation includes a clear statement to the effect that the insurance does not include workers compensation insurance and that workers compensation insurance is compulsory for employers.
- (3) An insurer or broker who contravenes this section is guilty of an offence.
- Maximum penalty: 200 penalty units.
- (4) In any action under section 144, 145, 145A or 156 in respect of a failure by an employer to obtain or maintain in force a policy of insurance, the court hearing the action may order that a specified insurer or broker be joined as a party in the proceedings if the court thinks that the insurer or broker may be culpable in the matter.
- (5) An insurer or broker is culpable in a matter if it appears that the insurer or broker has engaged in conduct that constitutes a contravention of this section (whether or not the insurer or broker has been prosecuted for or convicted of an offence in respect of the contravention) and that conduct caused or contributed significantly to the failure by the employer to obtain or maintain the insurance concerned.
- (6) In any proceedings in which an insurer or broker is joined as a party under this section the court hearing the proceedings may, if satisfied that the insurer or broker is culpable in the matter, order that the insurer or broker is to be jointly and severally liable with any other party in respect of any amount ordered to be paid by that other

party in the proceedings or is to be separately liable, in place of that other party, as to the whole or a specified part of any amount that the other party might be ordered to pay in the proceedings.

[2] Schedule 6 Savings, transitional and other provisions, Part 15 5
Provisions relating to insurers

Insert after clause 24:

25 Conduct of insurers and brokers—1996 amendments

Section 156A (as inserted by the *WorkCover Legislation Amendment Act 1996*) does not apply in respect of conduct that took place before the commencement of the section. 10

1.16 Amendments—compliance with provisions that restrict commencement of proceedings

[1] Section 66B No proceedings to enter up award on agreement for compensation 15

Insert after section 66B (2):

- (3) The rules of the Compensation Court and the regulations may make provision for or with respect to:
 - (a) requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that the proceedings are not prevented by this section from being entertained by the Court, and 20
 - (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 25
- 30

[2] Section 106G

Insert after section 106F:

106G Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to: 5

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106D, 106E or 106F applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and 10
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 15

1.17 Amendment—rate of interest on common law damages

Section 151M Payment of interest 20

Omit section 151M (6). Insert instead:

- (6) **Rate of interest**
The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the *Supreme Court Act 1970* for the period concerned. 25

1.18 Amendments—special provisions for coal miners

**[1] Schedule 6 Savings, transitional and other provisions, Part 4
Provisions relating to weekly payments of compensation**

Omit paragraph (b) from clause 4A (1). Insert instead:

- (b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act. 5

[2] Schedule 6, Part 18 Special provision relating to coal miners 10

Insert after clause 1 (2):

- (3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:
 - (a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and 15
 - (b) occurs after the commencement of this subclause (as inserted by the *WorkCover Legislation Amendment Act 1996*), and 20
 - (c) occurs more than 78 weeks after the date of the injury concerned, and
 - (d) occurs during the first 104 weeks of incapacity.
- (4) For the purposes of subclause (3), the first 104 weeks of incapacity is the period of incapacity for work (whether total or partial, or both) of 104 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods. 25 30

[3] Schedule 6, Part 18

Insert after clause 1:

2 Regulations to modify or disapply 1996 amendments in relation to coal miners

- (1) In this clause: 5
- the 1996 amendments* means the amendments made to the *Workers Compensation Act 1987* by the *WorkCover Legislation Amendment Act 1996* except the amendments made by Schedule 1.3 (Journey claims) to that Act.
- (2) The regulations may make provision for or with respect to either or both of the following: 10
- (a) modifying any of the 1996 amendments in their application to or in respect of workers employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies, 15
- (b) exempting any such workers from the operation of any of the 1996 amendments.

1.19 Amendments—hearing loss claims

[1] Section 69A No compensation for less than 6% hearing loss

Omit section 69A (2). 20

[2] Section 69A (3)

Omit “or further loss” wherever occurring.

[3] Section 69A (3)

Omit “or that further loss reaches 5%”.

[4] Section 69A (4) (c) and (d)

Omit the paragraphs. Insert instead:

- (c) The worker suffers a further hearing loss of 5%.
The worker is entitled in the usual way to
compensation for the 5% further loss because the
6% threshold has already been passed (the total
loss is now 13%).

5

[5] Section 69B Employer's responsibility to pay for hearing loss tests

Omit "or further loss" wherever occurring in section 69B (1).

10

[6] Section 69B (1) (c)

Omit "(being hearing loss for which the worker has not received
compensation under section 66)".

[7] Section 69B (1) (d)

Omit the paragraph.

15

**[8] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert at the end of clause 9:

- (4) The amendments made to sections 69A and 69B by the
WorkCover Legislation Amendment Act 1996 are taken
to have had effect on and from the commencement of
those sections.

20

1.20 Amendments—clarifications and miscellaneous amendments

[1] Section 94A Insurers to give notice and reasons when liability disputed

Insert at the end of section 94A (3):

5

The regulations may require an insurer to give a copy of a notice under this section to the claimant's employer.

[2] Section 117 Regulations fixing maximum costs recoverable by legal practitioners

Omit "medical opinions" from section 117 (1) (b).

10

Insert instead "medical reports (including certificates)".

[3] Section 117 (3)

Omit "any report".

Insert instead "any medical report (including any certificate)".

[4] Section 118 Regulations fixing maximum fees recoverable by medical practitioners for medico-legal services

15

Omit "medical opinion or certificate" from section 118 (1) (a).

Insert instead "medical report (including any certificate)".

[5] Section 118 (3)

Insert after section 118 (2):

20

- (3) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.

[6] Section 122 Solicitor/client costs in compensation proceedings

Insert after section 122 (6):

- (7) A reference in this section to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

5

[7] Section 152A Return-to-work plans for injured workers

Insert "or any such plan" after "section" in section 152A (3) (b).

[8] Section 270 Worker's right to information

Omit "refuse" from section 270 (2) (a). Insert instead "fail".

[9] Schedule 6 Savings, transitional and other provisions, Part 11 Provisions relating to proceedings before Commissioners and the Compensation Court

10

Omit "the insertion" from clause 1.
Insert instead "the commencement".

[10] Schedule 6, Part 11

15

Insert after clause 2:

3 Restrictions on commencement of proceedings

The provisions of Division 3A of Part 4 (sections 106D–106F) extend to apply in respect of an injury received before the commencement of that Division, but do not apply in respect of court proceedings pending or determined as at that commencement.

20

[11] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of the list of Acts in clause 1 (1):

WorkCover Legislation Amendment Act 1996

25

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Compensation Court Act 1984 No 89

Section 14A Medical referees

Insert at the end of section 14A (2): 5

The Chief Judge is to consult concerning proposed appointments of medical referees with such employer and employee organisations as the Minister may nominate from time to time or, in the absence of any such nomination, as the Chief Judge considers appropriate. 10

2.2 Construction Safety Act 1912 No 38

[1] Section 17A Riggers, divers, powdermen and certain other tradespersons

Insert after section 17A (2) (c): 15

(d) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person if the Authority is satisfied that the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence). In this paragraph, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*. 20 25

[2] Section 17A (5AA)

Omit "may suspend". Insert instead "may, at any time, suspend".

[3] Section 17A (5AA)

Insert at the end of section 17A (5AA):

If the Authority is satisfied that the holder of a powderman's certificate of competency who has been served with a notice under subsection (5) has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence) the Authority may, at any time, suspend the certificate of competency pending the determination of the matter by the Authority under this subsection. 5 10

In this subsection, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

2.3 Dangerous Goods Act 1975 No 68

[1] Section 27A Commissioner of Police to report on explosives licences and permits 15

Insert after section 27A (2) (d):

(d1) whether the applicant has a history of violence or threats of violence, with *violence* including behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*, 20

(d2) whether there is an apprehended violence order under Part 15A of the *Crimes Act 1900* in force with respect to the applicant, 25

[2] Section 28A

Insert after section 28:

28A Special provision for suspension or cancellation of explosives licences and permits

(1) This section applies to licences and permits to which section 27A applies. 30

- (2) If the Authority thinks that the holder of a licence or permit cannot be trusted to have access to explosives because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence), the Authority may, at any time, by notice in writing served on the holder require the holder to appear before the Authority at a time and place specified in the notice to show cause why the licence or permit should not be cancelled. The Authority may also, at any time, suspend the licence or permit pending determination of the matter under subsection (3). 5 10
- (3) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of the licence or permit, the Authority may cancel the licence or permit. 15
- (4) If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a licence or permit to which this section applies (whether or not the person has been served with a notice under subsection (2)) the Authority may, at any time, suspend the licence or permit for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force. 20
- (5) This section does not limit any powers of the Authority under section 28 with respect to a licence or permit to which this section applies. 25
- (6) In this section **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*. 30

2.4 Industrial Relations Act 1996 No 17

Section 197A

Insert after section 197:

197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation	5
(1) This section applies to the decision of a member of the Commission or of a Local Court constituted by an Industrial or other Magistrate to acquit a person of an offence against the occupational health and safety legislation.	10
(2) This section applies to such a decision only if proceedings for the offence were instituted by an inspector appointed under that legislation or with the consent of the Minister or other officer authorised by that legislation to give such a consent.	15
(3) An appeal lies to the Full Bench of the Commission in Court Session against a decision to which this section applies. The appeal is not limited to a question of law.	
(4) The appeal may be made by the Attorney General, the Minister, the Director of Public Prosecutions or the prosecutor in the proceedings in which the decision appealed against was made.	20
(5) An appeal may be made within 21 days after the date of the decision appealed against or within such further time (not exceeding 3 months after that date) as the Full Bench or the Commission constituted by a Presidential Member allows. Further time may be allowed, either before or after the end of that 21-day period.	25
(6) Section 191 applies to an appeal under this section.	
(7) On an appeal under this section, the Full Bench may:	30
(a) dismiss the appeal, or	
(b) set aside the decision appealed against and make a decision in the matter in accordance with law (including the conviction and sentence of the defendant for the offence charged).	35

- (8) If the Full Bench on appeal convicts the defendant of the offence, the maximum penalty that the Full Bench may impose for the offence is the maximum penalty that the court that acquitted the defendant could have imposed for the offence. 5
- (9) This section has effect despite anything to the contrary in section 196 or 197.
- (10) In this section:
occupational health and safety legislation means the *Occupational Health and Safety Act 1983*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act. 10
- (11) This section does not apply to a decision made before the commencement of this section. 15

2.5 Occupational Health and Safety Act 1983 No 20

[1] Section 21B Plant or premises involved in dangerous occurrence

Omit "the first working day (that is, any day except a Saturday, Sunday or public holiday) after" from section 21B (5). 20
Insert instead "the day after".

[2] Section 31KA

Insert after section 31K:

31KA Power of inspectors to obtain information, documents and evidence 25

- (1) An inspector may, by notice in writing served on a person who is, on reasonable grounds, believed by the inspector to be capable of giving information, producing documents or giving evidence in relation to a possible contravention of the relevant legislation require the person to do any one or more of the following things: 30
 - (a) to give an inspector, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and

	within the time and in the manner specified in the notice, any such information of which the person has knowledge,	
	(b) to produce to an inspector, in accordance with the notice, any such documents,	5
	(c) to appear before an inspector at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.	
(2)	A notice under this section must contain a warning that a failure to comply with the notice is an offence.	10
(3)	An inspector may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.	
(4)	An inspector may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an inspector to be a true copy.	15 20
(5)	A certified copy provided under subsection (4) is receivable in all courts as if it were the original.	
(6)	Until a certified copy of a document is provided under subsection (4), the inspector who has possession of the document must, at such times and places as the inspector thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.	25
[3]	Section 31M	30
	Omit the section. Insert instead:	
	31M Protection from incrimination	
(1)	A person is not excused from making a statement, giving or furnishing information or evidence or producing a document in accordance with a requirement under this Division on the ground that the statement, information,	35

document or evidence may tend to incriminate the person.

- (2) However, any statement, information, document or evidence obtained from a person pursuant to a requirement under this Division is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 31N) if: 5
- (a) the person claims before making the statement or giving, furnishing or producing the information, document or evidence that it might tend to incriminate the person, or 10
- (b) the person's entitlement to make a claim of the kind referred to in paragraph (a) was not drawn to the person's attention before the statement was made or the information, document or evidence was given, furnished or produced. 15
- (3) Subsection (2) does not prevent the admission in evidence in proceedings against a body corporate of any statement, information, document or evidence obtained pursuant to a requirement under this Division from a person as a competent officer of the body corporate. 20

[4] Section 31N Offence: obstruction and compliance

Omit section 31N (e). Insert instead:

- (e) in purported compliance with a requirement under this Division, or in answer to a question of an inspector asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular. 25 30

[5] Section 31U Review of notices

Omit section 31U (4). Insert instead:

- (4) The WorkCover Authority is to review a notice that is the subject of a duly made application for review. The notice is stayed (unless it is a prohibition notice) from 35

when the application for review is received by the WorkCover Authority until the WorkCover Authority gives notice to the applicant of the result of the review. If the notice is a prohibition notice it can be stayed as provided by section 31UA.

5

[6] Section 31UA

Insert after section 31U:

31UA Application to Industrial Magistrate for stay of prohibition notice

- (1) If a person duly applies under section 31U for review of a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate for a stay of the notice. 10
- (2) A stay may be granted for such period as the court considers appropriate but not so as to extend past the time when notice of the result of the review is given to the applicant by the WorkCover Authority. 15
- (3) A stay may be granted on such conditions as the court considers appropriate and may be revoked or amended by the court. 20

2.6 WorkCover Legislation Amendment Act 1995 No 89

[1] Schedule 1 Amendment of Workers Compensation Act 1987

Omit so much of item [6] as inserts section 11A (2) of the *Workers Compensation Act 1987*.

[2] Schedule 1 [43]

25

Omit so much of the item as inserts section 94A (5) and (6) of the *Workers Compensation Act 1987*.

[3] Schedule 1 [49], [50]

Omit the items.

[4] Schedule 3 Amendment of Compensation Court Act 1984

Omit items [1] and [2].

[5] Schedule 3 [29]

Omit so much of the item as inserts clause 8 of Part 4 of Schedule 4 to the *Compensation Court Act 1984*.

5

2.7 WorkCover Administration Act 1989 No 120

Section 19 Payments into and from Fund

Insert after section 19 (2) (b):

- (b1) expenditure incurred by the Department of Industrial Relations in relation to the exercise (whether before or after the commencement of this paragraph) of the functions of conciliation officers under the *Workers Compensation Act 1987* by conciliation officers who are officers of that Department, including the remuneration payable to those officers, 10
- (b2) the remuneration (including allowances) of conciliation officers appointed under section 96 (1A) of the *Workers Compensation Act 1987*, 15

2.8 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83 20

[1] Section 23 Definitions

Insert in alphabetical order:

- relevant journey*, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity. 25
- 30

[2] Section 24 Injuries to which this Part applies

Omit section 24 (1) (b). Insert instead:

- (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.

[3] Sections 28A and 28B

5

Insert after section 28:

28A Compensation for damage to personal effects, vehicles and other things

- (1) Compensation is payable under this Part in respect of:
 - (a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and 10
 - (b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and 15
 - (c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker. 20
 - (2) The amount of the compensation payable under this section is such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss. 25
- 30

-
- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion. 5
- (4) Compensation is not payable under this section in respect of any loss: 10
- (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or
- (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source. 15
- (6) In this section *personal effects* does not include personal effects referred to in section 28.
- 28B Prohibition on increased premium under motor vehicle insurance policy** 20
- (1) In this section:
- authorised activity damage* means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5). 25
- insurance policy* means policy of insurance in respect of damage to or destruction or loss of a vehicle. 30
- insurer* means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

-
- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage. 5
Maximum penalty: 5 penalty units. 10
- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it. 15
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.
- [4] Section 32 Application of Principal Act**
- Omit "section 52" from section 32 (1) (c). 20
Insert instead "sections 52, 52A and 52B".
- [5] Schedule 1 Transitional and other provisions**
- Omit the heading to the Schedule. Insert instead:
- Schedule 1 Savings and transitional provisions** 25
(Section 35)
- Part 1 General**
- 1A Savings and transitional regulations**
- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts: 30
WorkCover Legislation Amendment Act 1996
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 5
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication. 10

**Part 2 Workers Compensation (Bush Fire,
Emergency and Rescue Services) Act 1987**

[6] Schedule 1, Part 3 15

Insert after clause 2:

**Part 3 WorkCover Legislation Amendment Act
1996**

3 Operation of amendments

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section. 20

2.9 Workers' Compensation (Dust Diseases) Act 1942 No 14

[1] Section 6 Constitution of Fund 25

Insert "and" at the end of each of paragraphs (a) and (b) in section 6 (1) and insert at the end of section 6 (1) (d):

, and

- (e) all amounts that immediately before the commencement of this paragraph stood to the credit of the Dust Diseases Reserve Fund, and 30

WorkCover Legislation Amendment Bill 1996 (No 2)

Amendment of other Acts

Schedule 2

-
- (f) all amounts contributed by insurers under subsection (6) or (7D).

[2] Section 6 (7C)

Omit the subsection. Insert instead:

- (7C) The WorkCover Authority is to pay the contributions paid by insurers under subsections (6) and (7) to the board for payment into the Fund. 5

[3] Section 6 (7D)

Omit "Dust Diseases Reserve".

[4] Section 8 Certificate of medical authority and rates of compensation 10

Omit "sections 51 and 52" from section 8 (3) (b).
Insert instead "sections 51, 52, 52A and 52B".



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

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 *Occupational Health and Safety Act 1983*, the *Construction Safety Act 1912*, the *Dangerous Goods Act 1975* and certain other Acts to make the changes listed below.

The *Workers Compensation Act 1987* is amended as follows:

- (a) to limit payment of workers compensation to claims where work is a substantial contributing factor,
 - (b) to remove fault restrictions on workers compensation coverage on journeys to and from work,
 - (c) to provide for the discontinuation of weekly payments after 2 years where the worker is not seeking suitable employment,
 - (d) to reduce maximum lump sum benefits by 25%,
-

- (e) to exclude pre-existing disabilities from the assessment of lump sum compensation for permanent injuries (by extending an existing provision that currently applies only to back, neck and pelvis injury),
- (f) to establish new arrangements for conciliation of disputes about compensation, including arrangements for compulsory conciliation before court proceedings can be commenced,
- (g) to provide that the reports and certificates of medical panels are prima facie evidence as to the worker's condition and to impose limitations on the admission of other evidence about a worker's condition where a medical panel report or certificate has been admitted,
- (h) to authorise the making of regulations to regulate advertising of services provided by lawyers and agents in relation to workers compensation claims,
- (i) to change the workers compensation claims excess payable by the employer from \$500 to 2 weeks compensation,
- (j) to authorise court rules and regulations about disclosure of medical evidence to include provision to exclude medical evidence not disclosed in accordance with the rules or regulations,
- (k) to transfer to the Public Trustee certain functions of the WorkCover Authority concerning administration of compensation payments made in respect of deceased workers,
- (l) to make minor amendments to procedural matters affecting the making of a claim,
- (m) to include as deemed workers covered by the Act participants in workplace based training schemes prescribed by the regulations,
- (n) to increase the penalty for a failure to keep a register of workplace injuries as required by the Act,
- (o) to provide for the banning of cost recovery by legal practitioners who are directors of or who have a financial interest in a compensation claims agent who has persistently engaged in prohibited claims touting activities, and to make other minor and clarifying amendments to claims touting provisions,
- (p) to make general insurers and insurance brokers liable for misleading representations that induce employers to believe that comprehensive business insurance packages include or do not require workers compensation insurance,

Explanatory note

- (q) to enable rules of the Compensation Court or the regulations to require an application commencing proceedings in the Compensation Court to be accompanied by evidence that certain requirements imposed by various provisions of the Act as to when proceedings can be commenced have been complied with,
- (r) to bring the provision of the Act that sets the rate of interest to be paid on common law workers compensation damages into line with the equivalent provision of the *Motor Accidents Act 1988*,
- (s) to disapply for the period between 78 weeks after injury and the payment of compensation for 104 weeks provisions of the Act applying in relation to coal miners that limit the rates of weekly payments of compensation for incapacity for work to the rates applicable under the former Act (before the commencement of the current Act),
- (t) to insert a regulation-making power to enable any of the amendments to be made by this Bill to be modified or disapplied in their application to coal miners,
- (u) to repeal a provision that imposes 5% further thresholds on hearing loss claims (in addition to the initial 6% loss threshold),
- (v) to make minor miscellaneous and clarifying amendments to certain provisions,
- (w) to make consequential amendments including to enact savings and transitional provisions.

Amendments to other Acts:

- (a) the *Compensation Court Act 1984* is amended to require consultation with employer and employee organisations on the appointment of medical referees for the purposes of the *Workers Compensation Act 1987*,
- (b) the *Construction Safety Act 1912* is amended to authorise the suspension of a powderman's certificate of competency on the ground of a person's history of violence or threats of violence, and to authorise the refusal of such a certificate on that ground or on the ground of there being an apprehended violence order in force against the person,
- (c) the *Dangerous Goods Act 1975* is amended to authorise the refusal or suspension of various explosives licences and permits on the ground of a person's history of violence or threats of violence or the existence of an apprehended violence order against the person,

- (d) the *Industrial Relations Act 1996* is amended to provide a right of appeal to a Full Bench of the Industrial Relations Commission against the acquittal of a person for an alleged offence against occupational health and safety legislation,
- (e) the *Occupational Health and Safety Act 1983* is amended as follows:
 - to give inspectors under that Act power to require persons to provide information, documents and evidence about contraventions of the Act and certain related Acts,
 - to change the requirements under that Act that prevent places and things involved in a dangerous workplace occurrence being moved or interfered with until midnight on the first working day after the day on which the occurrence was notified, so that the requirements will apply only until midnight on the next day (whether or not that day is a working day),
 - to remove the automatic stay that applies to a prohibition notice issued under that Act (a notice prohibiting activities that carry an immediate risk to health or safety) when a review of the notice is applied for and instead provide for an application for a stay to be made to an Industrial Magistrate,
- (f) the *WorkCover Administration Act 1989* is amended to provide for the payment out of the WorkCover Authority Fund of the costs associated with conciliation officers under the *Workers Compensation Act 1987*,
- (g) the *WorkCover Legislation Amendment Act 1995* is amended to delete the following uncommenced amendments:
 - an amendment to the *Workers Compensation Act 1987* that would impose a 3-year limit on weekly payments of workers compensation on stress claims,
 - an amendment to the *Workers Compensation Act 1987* that would entitle a party to a conciliation conference to legal representation,
 - an amendment to the *Workers Compensation Act 1987* that would enable an employer to require the employer's workers compensation insurer to defend a workers compensation claim made against the employer,
 - an amendment to the *Compensation Court Act 1984* that will be overtaken by the amendments to that Act referred to above,

- (h) the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* is amended to provide for the payment of workers compensation to emergency service workers and rescue association workers for damage, destruction or loss of personal property on their person, and vehicles, equipment and things in their possession while carrying out an authorised activity, and personal property and vehicles while on a journey to or from an authorised activity,
- (i) the *Workers' Compensation (Dust Diseases) Act 1942* is amended to close the Dust Diseases Reserve Fund under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

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

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

Clause 4 is a formal provision that gives effect to the Schedule of amendments to other Acts.

Schedule 1 Amendment of Workers Compensation Act 1987

New conciliation arrangements

Schedule 1.1 makes amendments that provide new conciliation arrangements for the conciliation of disputes involving lump sum workers compensation, weekly payments of compensation and compensation for hospital, medical and other expenses. The new provisions apply to claims made after the commencement of the amendments, subject to the regulations which can change which claims the new provisions apply to and subject in the case of hospital, medical and other expenses to the phasing in of the new arrangements by regulation. The existing conciliation provisions of the Act continue to apply to claims pending at the commencement of the new provisions. Some features of the new conciliation scheme are as follows:

- The main feature of the new scheme is that court proceedings will not be able to be commenced until a dispute has been referred for conciliation. The dispute will then be screened for conciliation

purposes and can be fast-tracked to the Compensation Court. A worker will not be able to refer a dispute for conciliation until a certain period has elapsed after the making of the claim (to allow a reasonable time for the assessment of the claim) unless the worker is notified that the claim is disputed. The current arrangements for weekly compensation (under section 102, 103A and 106D) put the onus on the employer/insurer to refer disputes about weekly payments of compensation to conciliation. The current provisions for lump sum compensation (under section 106E) do not require a dispute to go to conciliation before court proceedings can be commenced and instead provide for a delay of 12 weeks after the claim is made or (in some cases) until a medical panel reports on the matter. The current provisions for hospital, medical and other expenses compensation requires only that a dispute has arisen about the compensation before court proceedings can be commenced.

- Provision is made for the appointment of new conciliation officers from the Department of Industrial Relations (currently conciliation officers are appointed from the WorkCover Authority), and a Principal Conciliator to have (with respect to new claims) the role of the Senior Conciliation Officer.
- Different provisions will apply to legal representation before conciliation officers (so that there will be a right to representation by a legal practitioner or agent at conciliation conferences).

A number of ancillary amendments are made to increase the effectiveness of conciliation arrangements, including an amendment to section 119 to require the court to have particular regard to an unreasonable failure to participate in conciliation in assessing costs penalties.

Employment required to be substantial contributing factor

Schedule 1.2 makes amendments to limit the payment of compensation under the Act to those situations where employment is a substantial contributing factor to the injury concerned. At present there is no requirement that employment be a contributing factor to an injury, only that the injury should have arisen out of or in the course of employment. In the case of an injury consisting of a disease or the aggravation, acceleration, exacerbation or deterioration of a disease, there is currently a requirement that employment be a contributing factor (but not a substantial contributing factor). The new requirement will not apply to injuries covered by existing special provisions for journey claims, recess claims and claims by trade union representatives. A

list of examples of matters to be taken into account for the purpose of determining whether employment is a substantial contributing factor is inserted. Consequential amendments are made to a section dealing with psychological injuries that currently requires employment to be a substantial cause of such an injury before compensation is payable and to various other provisions.

Journey claims

Schedule 1.3 makes amendments to the provisions that entitles a worker to compensation if the worker is injured on a journey to or from work so as to remove the exception that disentitles a worker to compensation if the injury is due to the fault of the worker and replace it with an exception that disentitles a worker to compensation if the injury is attributable to the serious and wilful misconduct of the worker. The new exception differs from a similar existing exception in section 14 that will continue to apply in all cases (not just journey injuries). The section 14 exception is more difficult to establish because it requires proof that the injury is solely attributable to the serious and wilful misconduct of the worker and does not apply where death or serious and permanent disablement results.

Reduction in maximum lump sum compensation amounts

Schedule 1.4 makes amendments that will reduce by approximately 25% the maximum lump sum benefits payable under the Act for permanent injuries and consequent pain and suffering. Under the amendments, the maximum amount payable for permanent injury will be reduced from \$132,300 to \$100,000, the maximum amount payable for 2 or more permanent injuries will be reduced from \$160,950 to \$121,000 and the maximum amount payable for pain and suffering resulting from a permanent injury will be reduced from \$66,200 to \$50,000.

Discontinuation of weekly payments after 2 years

Schedule 1.5 makes amendments to provide that weekly payments of compensation for partial incapacity or temporary permanent incapacity for work are to cease after 104 weeks of payments if the worker is not seeking suitable employment or not taking other reasonable return-to-work steps. The provision will require the worker to be given at least 12 weeks notice of proposed discontinuation of payments and to be told of the action necessary to prevent discontinuation.

Deduction for previous injuries and pre-existing conditions and abnormalities

Schedule 1.6 contains amendments to broaden the application of a provision introduced in 1995 that requires lump sum compensation payment for permanent loss to be reduced by the proportion of the loss that is attributable to previous injuries or pre-existing conditions or abnormalities. The provision currently applies only to permanent impairment of the back, neck or pelvis. The amendment will expand the provision so that it applies to all injuries for which lump sum compensation is payable. The result will be that the employer will only be liable for the part of a worker's permanent disability actually caused by the work injury. The intention is to minimise possible reluctance by employers to employ or re-employ workers with prior disabilities because of concern about being held liable for the pre-existing condition. To avoid litigation seeking to determine the precise percentage of pre-existing disability the amendments provide that where it is clear that the worker did have some pre-existing disability but there is an absence of medical evidence to ascertain the percentage, 10% of the worker's overall disability (of the bodily part or function affected) may be taken by the insurer assessing the claim or, in case of a dispute, by a conciliator or the Compensation Court as the proportion to be deducted for that purpose. The new provision will also subsume the function of section 71 of the Act, deleted by the amendments, which dealt with occupational diseases such as loss of hearing due to industrial noise and required prior losses suffered by the worker, for which compensation was already paid or payable, to be deducted from any claim for further loss.

Evidentiary value of medical panel reports and certificates

Schedule 1.7 contains amendments to provide that certificates and reports of medical panels under the Act are prima facie evidence as to a worker's condition in proceedings in the Compensation Court (to the extent that they are not already conclusive evidence under existing provisions) and that further evidence cannot be admitted on the matters of which they are evidence except with the leave of the Court given in the special circumstances of the case. A further amendment is made to enable the Court to order that costs associated with an unsuccessful attempt to admit further evidence about matters on which a medical panel or report is evidence in the proceedings are to be treated as unreasonably incurred if not reasonably justified (with the result that those costs cannot be recovered from another party or by the solicitor for the party on whose behalf they were incurred). A transitional provision is inserted to make it clear that the amendments apply to medical certificates and reports given after the commencement of the amendments whenever the injury occurred, but not to court proceedings pending or already determined.

Claims excess payable by employers

Schedule 1.8 makes an amendment that will change the workers compensation claim excess payable by an employer in respect of each weekly compensation claim against the employer from \$500 (as at present) to an amount equal to the first 2 weeks of compensation paid on the claim.

Marketing of legal and agency services

Schedule 1.9 inserts a new provision (and makes consequential transitional amendments) to give the WorkCover Authority power to prevent a solicitor, solicitor corporation or firm of solicitors from being able to recover fees, costs and charges in workers compensation matters if the solicitor, a member of the firm or a voting shareholder of the solicitor corporation is a director of or has a financial interest in a workers compensation claims agent and the agent or a director or manager of the agent has persistently engaged in certain prohibited conduct (such as touting) with respect to claims. The new provision is an extension of an existing provision that enables WorkCover to prevent the agent in such a case from being able to recover its fees, costs and charges.

A regulation-making power is also inserted to enable the making of regulations to control marketing (including advertising) of legal services and claims agent services that are provided in connection with claims for workers compensation.

A minor amendment is made to include a claim for the cost of provision of a hearing aid as one of the claims (a protected claim) to which the Division about prohibited conduct relating to touting for claims applies.

A further minor amendment inserts a provision to make it clear that the Division applies to conduct regarding prospective claims, whether or not a claim is ever actually made.

Transfer of WorkCover Authority functions to Public Trustee

Schedule 1.10 makes amendments that will transfer to the Public Trustee the functions of the WorkCover Authority with respect to the apportionment of compensation payments between dependants of a deceased worker and with respect to the investment and administration of compensation payable on the death of a worker, compensation payable to a person who is mentally ill or under the age of 18, and certain lump sum commutation payments.

Rules and regulations with respect to medical evidence

Schedule 1.11 makes an amendment that will expand an existing power to make rules of court and regulations with respect to the disclosure of medical reports to medical referees and medical panels so that the rules or regulations can provide for the exclusion of any report that is not disclosed as required.

Making a claim for compensation

Schedule 1.12 makes amendments to clarify an existing provision by providing that an insurer or self-insurer can accept a claim for compensation made more than 6 months after the injury, accident or death concerned without the need to obtain the approval of the Authority but that the approval of the Authority is required to authorise the acceptance of a claim made more than 3 years after the injury, accident or death. Another amendment makes it clear that the claim form prescribed or approved under the Act can include an authority that authorises a provider of medical, hospital or rehabilitation services to release information relevant to the claim.

Workplace based training programs—deemed employment

Schedule 1.13 makes an amendment to provide that participants in a Commonwealth funded workplace training program prescribed by the regulations are taken to be workers employed by the person who provides the workplace based training concerned. The regulations can also declare specified payments made under the training program to be the wages, for the purposes of calculating workers compensation insurance premiums, of the participants in the scheme.

Penalty increase—requirement to keep register of injuries

Schedule 1.14 makes an amendment to increase from 20 penalty units (\$2,000) to 50 penalty units (\$5,000) the penalty for a failure by an employer to keep the register of injuries required by section 90 to be kept at factories, workshops, shops, offices, mines and quarries.

Misleading conduct by insurers and brokers

Schedule 1.15 inserts a new provision that deals with conduct by insurers and insurance brokers whereby insurance packages that are marketed as comprehensive for business do not provide workers compensation insurance cover and do not contain a warning about this or that workers compensation insurance is compulsory for employers. The new provision makes such conduct an offence and also provides a mechanism whereby culpable insurers and brokers can be joined as co-defendants and made liable in proceedings for recovery against employers based on a failure to have workers compensation insurance when the conduct of the insurer or broker caused or significantly contributed to the failure to insure.

Compliance with provisions that restrict commencement of proceedings

Schedule 1.16 amends provisions inserted in the Act by the *WorkCover Legislation Amendment Act 1995*. Those provisions prevent certain proceedings being commenced or entertained in the Compensation Court unless certain preconditions have been met (generally that a dispute has arisen and a specified period has elapsed since the dispute arose). The amendments will enable rules of the Compensation Court or regulations to be made that require an application commencing proceedings in the Court of the kind that are subject to the preconditions to be accompanied by evidence (in the form of a certificate or other information required by the rules or regulations) that the preconditions have been met, and preventing the lodgment of an application that is not accompanied by the required evidence.

Rate of interest on common law damages

Schedule 1.17 amends the provision that deals with the rate of interest payable on awards of damages in common law workers compensation matters. The amendment removes an obsolete cross-reference to the rate of interest applicable under rules of the Supreme Court and replaces it with a reference to the rate set under the provision of the *Supreme Court Act 1970* that provides for the payment of interest on Supreme Court judgment debts. The rate for workers compensation common law damages is set at three-quarters of that Supreme Court rate. The amendment brings the provision into line with the equivalent provision of the *Motor Accidents Act 1988*.

Special provisions for coal miners

Schedule 1.18 amends the special transitional provisions that apply to coal miners. Under those provisions, a coal miner who is partially incapacitated but not provided with suitable duties is entitled to benefits at the total incapacity level (*deemed total incapacity*) with no limit as to how long the entitlement can continue (until retirement). In the same circumstances, other workers are entitled to a maximum 104 weeks deemed total incapacity compensation. The rates of total incapacity benefit and deemed total incapacity benefit for coal miners remained however at the lower scale of indexed rate applicable under the former Act. In practice coal miners' accident pay entitlements top up these rates to the higher levels applicable to other workers, but only for the first 78 weeks after injury. The purpose of the amendment is to apply to coal miners the higher rates of total incapacity

benefit and deemed total incapacity benefits applicable to other workers, but only during the period between 78 weeks after injury (ie the time at which accident pay top-up cuts out) and payment of compensation for 104 weeks (the maximum period of deemed total incapacity entitlement for other workers). The amendment applies only to a period of incapacity that occurs after the amendment commences and results from an injury received after the commencement of the *Workers Compensation Act 1987*.

The amendments also insert a regulation-making power to enable the regulations to modify or disapply any of the amendments made by this Bill (except the top-up compensation amendments referred to above and the journey claim amendments) in their application to coal miners.

Hearing loss claims

Schedule 1.19 makes amendments to sections 69A and 69B to remove the 5% further loss threshold for hearing loss claims, as inserted by the *WorkCover Legislation Amendment Act 1995*. The effect of the 5% further loss threshold is that having passed the initial 6% hearing loss threshold to be entitled to compensation for hearing loss a worker would be prevented from claiming for further hearing loss except in increments of loss of at least 5%. A transitional provision is inserted to provide that the amendments are taken to have commenced on the commencement of sections 69A and 69B.

Clarifications and miscellaneous amendments

Schedule 1.20 makes the following miscellaneous amendments to the Act:

- (a) Amendment [1] enables the making of regulations to require an insurer to give a copy of a notice disputing liability in respect of a claim to the claimant's employer.
- (b) Amendments [2]–[5] make minor clarifying changes to provisions dealing with regulations fixing maximum legal costs.
- (c) Amendment [6] makes it clear that an existing provision that imposes controls on the recovery of solicitor/client costs applies to costs incurred in respect of a prospective claim (whether or not a claim is ever actually made).
- (d) Amendment [7] makes it clear that the regulations relating to return-to-work plans for workers can create offences with respect to failures to comply with return-to-work plans.

- (e) Amendment [8] makes it clear that an employer who fails to provide certain information (such as the employer's name and address) at the request of a worker is guilty of an offence whether or not the employer actually refuses to provide the information.
- (f) Amendment [9] amends a transitional provision inserted in 1995 to make it clear that a reference in the provision to "commencement" is a reference to the commencement of the provision to which the transitional provision applies.
- (g) Amendment [10] deals with provisions inserted by the *WorkCover Legislation Amendment Act 1995* that prevent certain proceedings being commenced or entertained in the Compensation Court unless certain preconditions have been met (generally that a dispute has arisen and a specified period has elapsed since the dispute arose). The amendment inserts a transitional provision that makes it clear that those provisions extend to apply in respect of an injury received before the commencement of the provisions, but do not apply in respect of court proceedings pending or determined as at that commencement.
- (h) Amendment [11] adds the name of this amending Act to the list of Acts in respect of which consequential savings and transitional regulations can be made.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Compensation Court Act 1984* to require the Chief Judge of the Compensation Court to consult with employer and employee organisations on proposed appointments of medical referees by the Chief Judge. A consequential amendment is made to the *WorkCover Legislation Amendment Act 1995* to delete amendments to the *Compensation Court Act 1984* that provided for the appointment as medical referees of persons nominated by employer and employee organisations.

Schedule 2.2 amends the *Construction Safety Act 1912* to broaden existing provisions that allow the refusal or suspension of a powderman's certificate of competency on the ground that the holder is the subject of an apprehended violence order, so that such a certificate will be able to be refused or suspended on the ground that the person has a history of violence or threats of violence (including stalking and intimidation). The power to suspend on that ground will only be able to be used when the person has been called upon to show cause why the certificate should not be suspended or cancelled (which carries with it mechanisms for the person to be heard by the Authority and to appeal if dissatisfied with the decision). Further amendments are made to provide that an application for a powderman's certificate can be refused on those grounds also.

Schedule 2.3 amends the *Dangerous Goods Act 1975* to insert a new provision that authorises the WorkCover Authority to cancel or refuse to issue certain explosives licences and permits under the Act on the ground that the person cannot be trusted to deal with explosives because the person has a history of violence or threats of violence (including stalking and intimidation). The provision for cancellation requires the person to be given an opportunity to make submissions on the matter and WorkCover is authorised to suspend the licence or permit pending the making of submissions and the determination of the matter. The provision also authorises the refusal or suspension of an explosives licence or permit while a person is the subject of an apprehended violence order. The provision parallels an existing provision in the *Construction Safety Act 1912* that confers similar powers of suspension and cancellation in respect of powdermen's certificates of competency (which is also being amended by this Bill to allow suspension and cancellation on the grounds of a person's history of violence or threats of violence).

Schedule 2.4 amends the *Industrial Relations Act 1996* to provide a right of appeal to a Full Bench of the Industrial Relations Commission against a decision by a judicial member of that Commission or an Industrial or other Magistrate to acquit a person for an alleged offence against the *Occupational Health and Safety Act 1983* or certain associated occupational health and safety legislation. Any such appeal:

- (a) may be made by the Attorney General, Minister for Industrial Relations, DPP or the prosecutor, and
- (b) must be made within 21 days after the date of the decision appealed against or, with the leave of the Full Bench, within 3 months of that decision, and
- (c) is not to be by way of a new hearing, and
- (d) may be made if proceedings for the offence were originally instituted by an inspector under that legislation or with the consent of the Minister or other authorised officer (but may not be made if the proceedings were instituted by the secretary of an industrial organisation without any such consent).

The amendment overcomes the decision of the Court of Criminal Appeal in *CI&D Manufacturing Pty Ltd & Ors v The Registrar Industrial Court of New South Wales & Ors* given on 16 August 1996, which held that the common law rule against double jeopardy was not abrogated by rights of appeal, expressed in general terms, under the now repealed *Industrial Relations Act 1991*. The decision in that case applies to appeals under the *Industrial Relations Act 1996*.

Schedule 2.5 amends the *Occupational Health and Safety Act 1983* as follows:

- (a) Amendment [1] changes a provision that prohibits plant and areas of premises involved in dangerous occurrences from being used, moved, interfered with or disturbed. The prohibition currently applies until midnight on the following **working** day. The amendment changes this to midnight on the next day (whether or not the next day is a working day).
- (b) Amendments [2]–[4] insert special provisions that will authorise occupational health and safety inspectors to require a person who is believed to have information, documents or evidence about a possible contravention of the relevant legislation to give the information, documents or evidence to the inspector. The provisions contain protections against self incrimination.
- (c) Amendments [5] and [6] change the provision that provides for an automatic stay of a prohibition notice (a notice prohibiting certain workplace activities that carry an immediate risk to health or safety) when a review of the notice is applied for. The amendment removes the automatic stay and replaces it with a right to apply to a Local Court constituted by an Industrial Magistrate for an order staying the prohibition notice. A court ordered stay cannot extend past the time when notice of the result of the review of the prohibition notice is given to the applicant by the WorkCover Authority.

Schedule 2.6 amends the *WorkCover Legislation Amendment Act 1995* as follows:

- (a) Amendment [1] repeals an uncommenced amendment to the *Workers Compensation Act 1987* that would operate to impose a 3 year limit on weekly payments of compensation under that Act for psychological (stress) injuries.
- (b) Amendment [2] repeals uncommenced amendments to the *Workers Compensation Act 1987* that would operate to entitle a party to a dispute to be represented by a barrister or solicitor at a conciliation conference.
- (c) Amendments [3] and [4] repeal uncommenced amendments to the *Compensation Court Act 1984* that provided for the nomination of medical practitioners by employer and employee organisations and the Department of Health for appointment as medical referees, and equal representation on medical panels by employer and employee nominees. A further amendment is made to the Act in this Schedule to require the Chief Judge of the Compensation Court to consult with employer and employee organisations on proposed appointments of medical referees.

Schedule 2.7 amends the *WorkCover Administration Act 1989* to provide for payment out of the WorkCover Authority Fund of the costs incurred by the Department of Industrial Relations in relation to workers compensation conciliation officers who are officers of that Department and to transfer to that Act a provision currently in the *Workers Compensation Act 1987* that provides for payment out of the WorkCover Authority Fund of the remuneration of conciliation officers who are appointed by the Governor.

Schedule 2.8 amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to provide for the payment of compensation to an emergency service worker or rescue association worker in the following circumstances:

- (a) destruction, damage or loss of personal effects on the worker while carrying out an authorised activity,
- (b) destruction, damage or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the authorised activity and owned by or in the possession or custody of the worker,
- (c) destruction, damage or loss of any vehicle used to transport the worker to or from the scene of an authorised activity and owned by or in the possession or custody of the worker.

The Act already provides for this kind of compensation to be payable to bushfire fighters and the new provisions generally follow the provisions for fire fighters.

The Act also already provides for the payment of compensation to emergency service workers and rescue association workers for damage to crutches, artificial aids, spectacles and clothing.

The Act is also amended to prevent a motor vehicle insurer from increasing an insurance premium because a vehicle was damaged in circumstances in which compensation is payable. This provision parallels an equivalent provision applicable to bushfire fighters.

Schedule 2.9 amends the *Workers' Compensation (Dust Diseases) Act 1942* to close the Dust Diseases Reserve Fund under that Act. The balance in that Fund and its role as the collection fund for contributions by insurers to the liabilities that arise under that Act will be transferred to the existing Workers' Compensation (Dust Diseases) Fund under that Act.



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of other Acts	2

Schedules

1 Amendment of Workers Compensation Act 1987	3
2 Amendment of other Acts	54



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

No , 1996

A Bill for

An Act to amend the *Workers Compensation Act 1987* to make further provision with respect to maximum workers compensation benefits, journey claims, deductions for previous injuries, weekly payments of compensation, conciliation of disputes, and in other respects; to amend certain other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *WorkCover Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

4 Amendment of other Acts 10

Each Act set out in Schedule 2 is amended as set out in that Schedule.

Schedule 1 **Amendment of Workers Compensation Act 1987**

(Section 3)

1.1 **Amendments—new conciliation arrangements**

[1] **Section 3 Definitions** 5

Insert the following definitions in section 3 (1) in alphabetical order:

existing claim has the meaning given by section 87D.

new claim has the meaning given by section 87D.

Principal Conciliator means the Principal Conciliator appointed under section 87F. 10

[2] **Section 3 (6)**

Insert after section 3 (5):

- (6) Notes included in the text of this Act do not form part of this Act.

[3] **Part 4, Division 1A** 15

Insert before Division 1 of Part 4:

Division 1A Special conciliation provisions for new claims

87D Definitions

- (1) In this Act: 20

existing claim means, subject to any regulations under this section that modify this definition:

- (a) any claim for compensation made before the commencement of this Division (as inserted by the *WorkCover Legislation Amendment Act 1996*), and 25
- (b) any claim for compensation made after that commencement that is a further claim in respect of an injury for which a claim was made before that commencement.

new claim means any claim for compensation that is not an existing claim.

- (2) The regulations can modify the definition of ***existing claim*** in this section and for that purpose can contain provisions of a savings or transitional nature with respect to the application of provisions of this Part to and in respect of claims that as a result of any such regulations become or cease to be existing claims. 5
- (3) In modifying the definition of ***existing claim***, the regulations can even provide that no claims are existing claims (with the result that all claims will be dealt with as new claims), or alternatively can provide that all claims are existing claims (with the result that no claims will be dealt with as new claims). 10

87E Conciliation officers for new claims or existing claims 15

- (1) A person employed or appointed as a conciliation officer may be so employed or appointed as a conciliation officer for new claims (a ***new claims conciliation officer***) or for existing claims (an ***existing claims conciliation officer***). If a person is not employed or appointed as a new claims conciliation officer, the person is taken to have been employed or appointed as an existing claims conciliation officer. 20
- (2) New claims conciliation officers may be referred to as conciliation officers or as conciliators. 25

87F Principal Conciliator for new claims

- (1) Of the persons employed as new claims conciliation officers one is to be appointed by the head of the Department of Industrial Relations as the Principal Conciliator. When a person is appointed as the Principal Conciliator, any previous appointment of a person as the Principal Conciliator ceases to have effect. 30
- (2) The Principal Conciliator has and may exercise in respect of new claims all the functions of the Senior Conciliation Officer, in place of the Senior Conciliation Officer. 35

-
- (3) The Principal Conciliator can delegate to any new claims conciliation officer any of the Principal Conciliator's functions under this Part, including any function that the Principal Conciliator has under subsection (2), but cannot delegate this power of delegation.

5

[4] Section 96 Conciliation officers

Omit "Officers of the Authority" from section 96 (1).

Insert instead "Officers of the Authority or of the Department of Industrial Relations".

[5] Section 96 (4)

10

Insert after section 96 (3):

- (4) In the month of May in each year, the Minister is to prepare and forward to the WorkCover Authority an estimate of the expenditure to be incurred by the Department of Industrial Relations in relation to the exercise of the functions of conciliation officers under this Act by conciliation officers who are officers of that Department, including the remuneration payable to those officers.

15

[6] Section 97 Referral of disputes for conciliation

20

Insert at the end of section 97:

Note. Disputes involving new claims are to be referred to the Principal Conciliator, not the Senior Conciliation Officer.

- (3) The validity of a referral under this section is not affected by the incorrect referral of a dispute to the Principal Conciliator or the incorrect referral of a dispute to the Senior Conciliation Officer, and either can refer a dispute referred to him or her to the other.

25

[7] Section 98A Power of conciliation officer to require information

Insert after section 98A (5):

- (6) The regulations may make provision for or with respect to any of the following matters:
 - (a) excepting specified kinds of information or documents from the operation of this section, 5
 - (b) the circumstances in which information or documents furnished or produced to a conciliation officer under this section may or may not be furnished or produced by the conciliation officer to any other party to the dispute. 10

[8] Section 98D Certificates as to conciliation of disputes

Insert after section 98D (2):

- (2A) A conciliation officer is to issue a conciliation certificate for a dispute at the request of the Senior Conciliation Officer. 15
- (2B) The Senior Conciliation Officer may, either on the recommendation of the conciliation officer or on his or her own initiative, refer a conciliation certificate to the Registrar of the Compensation Court to form part of any file of the Court on proceedings commenced, or that may later be commenced, in relation to the dispute concerned. 20

[9] Section 98D (3)

Re-number paragraph (e) of section 98D (3) as paragraph (f) and omit "in the opinion of the conciliation officer" from that paragraph. 25

[10] Section 98D (3) (e)

Insert after section 98D (3) (d):

- (e) if conciliation was unsuccessful (wholly or partially) the reasons for that, 30

[11] Sections 98E, 98F

Insert after section 98D:

98E Time within which disputes must be referred to conciliation

The regulations may make provision for or with respect to limiting the time within which a dispute in respect of a new claim can be referred for conciliation under this Division. 5

98F Agreements arising from conciliation

- (1) If the conciliation of a dispute under this Division gives rise to an agreement between the parties, the conciliation officer may assist the parties in drafting written terms of agreement or in completing any approved standard form of agreement. 10
- (2) If the agreement relates to compensation under section 66 or 67, the conciliation officer can refer the agreement to the Senior Conciliation Officer for forwarding on to the Authority to be registered under section 66A. An application for registration of the agreement under section 66A is then taken to have been made by a party to the agreement. 15
20
- (3) If the agreement relates to other compensation, it may, with the consent of the parties, be registered by the Authority (in the case of existing claims) or by the head of the Department of Industrial Relations (in the case of new claims). 25
- (4) The following are examples of the provisions that an agreement arising from conciliation of a dispute can contain:
 - (a) provision for the employer or insurer to continue to pay compensation for a specified minimum period subject to compliance by the worker with specified conditions, 30

- (b) provisions to cover matters such as the supply of medical certificates certifying as to incapacity and requirements for participation by the worker in the employer's workplace rehabilitation program, rehabilitation training or other specified activities designed to assist the worker to return to work, 5
- (c) provisions designed to avoid or minimise further disputes between the parties, such as provisions requiring the parties to communicate with the conciliation officer concerning any dispute or potential dispute, 10
- (d) provision for a review of the agreement at a specified time, either by the parties alone or in consultation with the conciliation officer,
- (e) provisions designed to deal with any further disputes that might arise, so as to resolve them quickly while keeping costs to a minimum. 15

[12] Section 100A Proceedings before conciliation officers

Insert "in respect of an existing claim" after "dispute" wherever occurring in section 100A (2) and (3). 20

[13] Section 100A (2A)

Insert after section 100A (2):

- (2A) A person who is a party to any dispute in respect of a new claim is entitled to be represented by a barrister or solicitor, and by an agent of such a class as may be prescribed by the regulations. The conciliation officer may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party. 25
30

[14] Section 100A (3C)

Insert after section 100A (3B):

- (3C) A conciliation officer may, subject to any general directions by the Senior Conciliation Officer:

-
- (a) hold a conciliation conference with all relevant parties in attendance and, if the conciliation officer considers appropriate, with the employer (in the employer's own right, even if the employer is represented by an insurer) and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them, and 5
- (b) in a case where the employer concerned is represented by an insurer—nevertheless communicate directly with the employer about the provision of suitable employment for the worker or any other matter connected with the dispute. 10

[15] Section 100A (7)

Insert after section 100A (6): 15

- (7) An agreement that arises from the conciliation of a dispute under this Division is not admissible in proceedings before the Compensation Court, except:
- (a) when the parties to the agreement otherwise agree, or 20
- (b) in such circumstances as the regulations may specify.

[16] Section 102 Existing claims for weekly payments—commencement of payments

Insert at the end of section 102 (1): 25

This section does not apply to new claims.

[17] Section 102A

Insert after section 102:

102A New claims for weekly payments—commencement of payments 30

- (1) This section applies only to new claims.
- (2) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.

- (3) If the person on whom a claim is made disputes liability to make the weekly payments within 21 days after the claim for compensation is duly made, the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) does not apply. 5

Note. If liability is disputed the worker can refer the dispute to conciliation. See section 106FB.

- (4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (2) and (3) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends: 10

- (a) 42 days after the claim for compensation is duly made, or
(b) when the person ceases to have that reasonable excuse, 15
whichever is earlier. 20

- (5) An employer has such a reasonable excuse if:
(a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and 25
(b) the employer has complied with all reasonable requests of the insurer with respect to the claim.
(6) This section ceases to apply if the claim for compensation is withdrawn.

[18] Section 103 Offences—commencement of weekly payments 30
Insert “or 102A” after “102” in section 103 (1).

[19] Section 103A Disputes about continuation of weekly payments to be referred to conciliation within 21 days
Insert “This section does not apply if the claim concerned is a new claim.” after “Division 2.” in section 103A (1). 35

[20] Section 106CA

Insert before section 106D:

106CA Division applies only to existing claims

This Division applies only to court proceedings in respect of an existing claim.

5

[21] Part 4 Division 3B

Insert after Division 3A of Part 4:

Division 3B Restrictions on commencing court proceedings—new claims

106FA Division applies only to new claims

10

This Division applies only to court proceedings in respect of a new claim.

106FB Restrictions on commencing court proceedings about weekly payments

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 2 and either:
- 15
- 20
- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) the conciliation officer has given a notification under section 104 (3) in respect of the dispute, or
- (c) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- 25
- whichever happens first.
- (2) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 2 until:
- 30

- (a) the person on whom the claim is made has disputed liability to make the payments, or
- (b) the time within which the person on whom the claim is made is required under section 102A to commence those payments has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute),
5
whichever happens first.

Note. Section 102A allows up to 42 days for the commencement of weekly payments of compensation. 10

- (3) A worker cannot commence court proceedings in respect of *related compensation* until subsection (1) allows the commencement of proceedings in respect of the weekly payments of compensation concerned. Related compensation is compensation under Division 3 of Part 3 that relates to the incapacity for work to which the weekly payments of compensation relate. 15

- (4) This section does not prevent the commencement of court proceedings in any of the following circumstances:
 - (a) if the proceedings concern an application for a determination under section 53, 20
 - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,
 - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of this Act, 25
 - (d) any circumstances prescribed by the regulations.

106FC Restrictions on commencing court proceedings for lump sum compensation 30

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 unless a dispute about that compensation has been referred for conciliation under Division 2 and either:
 - (a) the conciliation officer has issued a certificate of conciliation outcome, or 35

-
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- whichever happens first.
- (2) A worker cannot refer a dispute about compensation under section 66 for conciliation under Division 2 until: 5
- (a) 12 weeks after the claim for the compensation is duly made, or
- (b) the person on whom the claim is made disputes liability to pay the compensation, 10
- whichever happens first.
- (3) If the person on whom a claim for compensation under section 66 is made has, within 12 weeks after that claim is duly made, duly applied under section 131 for reference of the matter to a medical panel, the worker can commence court proceedings in respect of that compensation 14 days after the panel has given its certificate under that section even if subsection (1) would otherwise prevent commencement of proceedings at that time. 15 20
- (4) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss or further loss, or for related compensation, until this section allows the commencement of proceedings in respect of compensation under section 66 for the loss or further loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss, further loss or pain and suffering. 25
- (5) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66, the proceedings are to be adjourned until: 30
- (a) 12 weeks after the claim was amended, or
-

- (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates, 5
whichever is later.
- (6) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (5). 10
- (7) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3). 15
- (8) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim. 20
25
- (9) This section does not prevent the commencement of court proceedings in any circumstances prescribed by the regulations. 30

106FD Restrictions on commencing court proceedings about hospital, medical and other expenses

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses) or Division 5 (Compensation for property damage) of Part 3 unless a dispute about that compensation has been referred for conciliation under Division 2 and either: 35

-
- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation, 5
- whichever happens first.
- (2) A worker cannot refer a dispute about compensation under Division 3 or 5 of Part 3 for conciliation under Division 2 until:
- (a) 28 days after the claim for compensation is duly made, or 10
- (b) the person on whom the claim is made disputes liability to pay the compensation,
- whichever happens first.
- (3) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 and are commenced in compliance with section 106FB or 106FC (whichever is appropriate). 15 20
- (4) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.
- (5) This section applies only in respect of new claims for compensation that are of a class prescribed by the regulations as subject to this section. If a new claim for compensation under Division 3 or 5 of Part 3 is not one in respect of which this section applies, section 106F applies in respect of the claim as if it were an existing claim. 25 30

106FE Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to: 35

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106FA, 106FB or 106FC applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and 5
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 10

[22] Section 107A

Omit the section. Insert instead:

107A Authority or DIR may intervene in proceedings 15

- (1) The Authority or the head of the Department of Industrial Relations (*the DIR*) has a right to be heard in any proceedings before the Compensation Court.
- (2) The Authority or the head of the DIR may, for that purpose, be represented by a barrister or solicitor or an officer of the Authority or the DIR or by any other person. 20
- (3) In any such proceedings the Authority or the head of the DIR may apply for an order for which any party may apply in those proceedings. 25

[23] Section 119 Limit on recovery of costs unreasonably incurred

Insert after section 119 (2):

- (2A) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 98D certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate. 30

[24] Schedule 2 Provisions relating to appointed conciliation officers

Omit "Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*." from clause 3.

[25] Schedule 6 Savings, transitional and other provisions, Part 10 Provisions relating to conciliation officers and weekly payments of compensation

5

Insert after clause 4:

5 New conciliation arrangements—WorkCover Legislation Amendment Act 1996

10

Amendments made by the *WorkCover Legislation Amendment Act 1996* do not affect the continuity of employment or appointment of conciliation officers employed or appointed as such immediately before the commencement of those amendments.

15

1.2 Amendments—employment required to be substantial contributing factor

[1] Section 9A

Insert after section 9:

9A No compensation payable unless employment substantial contributing factor to injury

20

(1) No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury (with "substantial" used in the sense of real and important).

25

(2) The following are examples of matters to be taken into account for the purposes of determining whether a worker's employment was a substantial contributing factor to an injury (but this subsection does not limit the kinds of matters that can be taken into account for the purposes of such a determination):

30

- (a) the time and place of the injury,
 - (b) the nature of the work performed and the particular tasks of that work,
 - (c) the duration of the employment,
 - (d) the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she has not been at work or had not worked in that employment, 5
 - (e) the worker's state of health before the injury and the existence of any hereditary risks, 10
 - (f) the worker's lifestyle and his or her activities outside the workplace.
- (3) A worker's employment is not to be regarded as a substantial contributing factor to a worker's injury merely because of either or both of the following: 15
- (a) the injury arose out of or in the course of, or arose both out of and in the course of, the worker's employment,
 - (b) the worker's incapacity for work, loss as referred to in Division 4 of Part 3, need for medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service as referred to in Division 3 of Part 3, or the worker's death, resulted from the injury. 20
25
- (4) This section does not apply in respect of an injury to which section 10, 11 or 12 applies.

[2] Section 11A No compensation for psychological injury caused by reasonable actions of employer

Omit section 11A (1). Insert instead: 30

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the

employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.

- [3] **Section 11A (5)** 5
Omit the subsection.
- [4] **Section 11A (6)**
Insert at the end of section 11A (6):
This section does not affect section 9A (No compensation payable unless employment substantial contributing factor to injury). 10
- [5] **Section 11A (7)**
Omit the subsection. Insert instead:
(7) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 92) use, for the purpose of describing the worker's condition, accepted medical terminology and not only terminology such as "stress" or "stress condition". 15 20
- [6] **Section 11A (8)**
Insert "then (unless the insurer or self-insurer waives that requirement)" after "deficient claim".
- [7] **Section 11A (8) (a)** 25
Insert "or 102A" after "102".
- [8] **Section 16 Aggravation etc of diseases—employer liable, date of injury etc**
Omit "contributing factor" wherever occurring.
Insert instead "substantial contributing factor". 30

[9] Section 19 Diseases deemed work related

Omit "contributing factor" from section 19 (1) (b).
Insert instead "substantial contributing factor".

[10] Section 92 Making of claim for compensation

Insert after section 92 (1B): 5

(1C) The medical certificate required to accompany a claim for weekly payments of compensation must include a statement of the medical practitioner's opinion (however expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor. 10

(1D) If a claim is deficient because subsection (1C) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement): 15

(a) the claim is not considered to have been duly made for the purposes of section 102 or 102A until subsection (1C) is complied with, and 20

(b) court proceedings cannot be commenced in respect of the claim until subsection (1C) is complied with. 25

(1E) All claims for compensation under section 66 and 67 in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later. 30

**[11] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

Insert after clause 8:

**9 Requirement that employment be substantial
contributing factor**

- | | | |
|-----|--|--------------|
| (1) | Section 9A of this Act, as inserted by the <i>WorkCover Legislation Amendment Act 1996</i> , does not apply to injuries received before the commencement of that section. | 5 |
| (2) | The amendments made to section 11A, 16, 19 and 92 of this Act by Schedule 1.2 to the <i>WorkCover Legislation Amendment Act 1996</i> do not apply in respect of injuries received before the commencement of the amendments, except as provided by subclause (3). | 10 |
| (3) | Section 92 (1C) and (1D) extend to apply to an injury that is a psychological injury within the meaning of section 11A that was received before the commencement of those subsections and after the commencement of section 11A. | 15 |
| (4) | In a case where section 16 deems an injury to have happened within 12 months after the commencement of section 9A, sections 16 (2) and 68B (3) are, in their application in respect of any period of employment before the commencement of section 9A, to be read as if a reference in those provisions to employment that was a substantial contributing factor were a reference to employment that was a contributing factor (whether or not a substantial contributing factor). | 20

25 |

1.3 Amendments—journey claims

[1] Section 10 Journey claims

30

Omit section 10 (1A). Insert instead:

- (1A) Subsection (1) does not apply if the personal injury is attributable to the serious and wilful misconduct of the worker.

WorkCover Legislation Amendment Bill 1996 (No 2)

Schedule 1 Amendment of Workers Compensation Act 1987

[2] Section 10 (1B)

Omit “to have been caused by the fault of the worker”.
Insert instead “to be attributable to the serious and wilful misconduct of the worker”.

[3] Section 10 (1C)

5

Omit the subsection.

[4] Section 10 (6)

Omit the definition of *fault*.

**[5] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

10

Insert after clause 2 (2):

- (3) Section 10 of this Act continues to apply in respect of personal injury received by a worker before the commencement of the amendments made to that section by the *WorkCover Legislation Amendment Act 1996* as if those amendments had not been made.

15

**1.4 Amendments—reduction in maximum lump sum
compensation amounts**

[1] Section 66 Compensation for permanent injuries

Omit “\$132,300” from section 66 (1).
Insert instead “\$100,000”.

20

[2] Section 66 (2)

Omit “\$160,950”. Insert instead “\$121,000”.

[3] Section 67 Compensation for pain and suffering

Omit “\$66,200” from section 67 (1).
Insert instead “\$50,000”.

25

**[4] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert after clause 17:

**18 Reduction in lump sum compensation amounts—1996
amendments** 5

- (1) Despite sections 66 (3) and 67 (6), the compensation payable under section 66 or 67 in respect of any injury received before the commencement of the amendment of those sections by the *WorkCover Legislation Amendment Act 1996* where no claim for compensation under either section 66 or 67 in respect of the injury was duly made by the worker before that commencement is to be calculated by reference to the requisite percentage of the amounts in force under the relevant section immediately after its amendment by that Act. 10 15
- (2) If proceedings are pending before the Compensation Court on a claim for compensation under section 66 or 67, a claim for that compensation is taken not to have been made before the commencement of the amendments to which this clause applies if: 20
- (a) no claim for that compensation was duly made before the commencement of those amendments, or
- (b) the worker did not, before the commencement of those amendments, give the employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation claimed. 25 30
- (3) If this clause results, in a particular case, in a greater amount of compensation being payable in that case than would have been the case in the absence of this clause, this clause does not apply in that particular case.

1.5 Amendments—discontinuation of weekly payments after 2 years

[1] Section 38A Determination of whether worker is seeking suitable employment

Insert “and section 52A (Discontinuation of weekly payments after 2 years)” after “section 38” in section 38A (1). 5

[2] Section 38A (4)

Insert “or to the discontinuation of weekly payments under section 52A” after “section 38”.

[3] Section 40A Assessment of incapacitated worker’s ability to earn 10

Insert “, and about the possible effects of section 52A on the worker” after “those entitlements” in section 40A (2).

[4] Sections 52A and 52B

Insert after section 52: 15

52A Discontinuation of weekly payments after 2 years

(1) Weekly payments of compensation in respect of incapacity for work are not payable for any period beyond the first 104 weeks of incapacity for work (whether total or partial, or a combination of both) in respect of which the worker has received or is entitled to receive weekly payments of compensation but only if one or more of the following paragraphs applies to the worker: 20

(a) the worker is partially incapacitated for work, is not suitably employed (within the meaning of section 43A, has not yet exhausted his or her entitlement to compensation under section 38 and is not seeking suitable employment (as determined in accordance with section 38A), 25 30

-
- (b) the worker has received weekly payments (including payments during rehabilitation training) under section 38 for the maximum total period under that section and has subsequently unreasonably refused an offer of suitable employment for which the worker received that training, 5
- (c) the worker has received weekly payments under section 38 for the maximum total period under that section but has failed to obtain suitable employment solely because of the state of the labour market (rather than because of the effects of the worker's injury). 10
- (2) Weekly payments of compensation do not cease to be payable pursuant to this section until the person liable to make the payments has given the worker at least 12 weeks notice (a **payment discontinuation notice**) of the person's intention to discontinue the payments under this section (even if this would result in the worker receiving the payments for more than 104 weeks). The regulations may provide that the requirements of this subsection do not apply in specified cases or classes of cases. 15 20
- (3) The following requirements apply to a payment discontinuation notice:
- (a) the notice must contain a statement of the grounds on which the notice is given (by reference to which of paragraphs (a), (b) and (c) of subsection (1) applies to the worker) and must inform the worker of action by the worker that is necessary to prevent the discontinuation of weekly payments, 25 30
- (b) the notice is to be given to the worker personally or by post,
- (c) the notice must contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers. 35
-

WorkCover Legislation Amendment Bill 1996 (No 2)

Schedule 1 Amendment of Workers Compensation Act 1987

- (4) The fact that the worker becomes temporarily totally incapacitated for work after service of the payment discontinuation notice does not prevent the discontinuation of weekly payments under this section.
- (5) The payment discontinuation notice can be given up to 12 weeks before the end of the 104 week period for which the worker has received or is entitled to receive weekly payments of compensation but cannot be given earlier than that. 5
- (6) Once a payment discontinuation notice is given, and so long as the worker has provided the worker's employer or the employer's insurer with a certificate by a medical practitioner specifying the expected duration of the worker's incapacity, the person paying the compensation must not discontinue payment, or reduce the amount, of the compensation during the period of incapacity so specified until the worker has received another 12 weeks of payments. This subsection does not apply to a reduction in weekly compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable (whether under section 38 or otherwise). 10 15 20
- (7) A payment discontinuation notice can be withdrawn at any time by notice given in writing to the worker by the person who gave the notice, and once withdrawn is taken never to have been given (for the purposes of the further operation of this section in relation to the cessation of weekly payments of compensation). This subsection does not prevent the giving of a further payment discontinuation notice. 25 30
- (8) In determining the period for which a worker has received or is entitled to receive weekly payments of compensation, separate periods during which the worker received or is entitled to receive those payments are to be aggregated. 35
- (9) The giving of a payment discontinuation notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

-
- (10) This section does not apply to a worker who is permanently and totally incapacitated for work and does not apply to compensation for an injury received by a person as a worker employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies.

5

52B Proceedings in Compensation Court on dispute about discontinuation of weekly payments after 2 years

- (1) The Compensation Court may, on the application of the worker made within 12 weeks after the payment discontinuation notice under section 52A is given to the worker, determine any dispute about the operation of that section. The regulations may make provision for modifying the operation of this subsection in its application to cases in which a payment discontinuation notice is not required to be given under section 52A.
- (2) The fact that proceedings are pending in the Compensation Court on an application under subsection (1) does not prevent the discontinuation of weekly payments of compensation in accordance with section 52A, subject to any order of the Compensation Court under this section.
- (3) When proceedings on a dispute are pending under subsection (1) before the Compensation Court, the worker may apply to the court for an interim award of weekly compensation pending determination of the dispute by the court.
- (4) The Compensation Court may make such an interim award only if satisfied that the worker is subject to hardship and there is likely to be an unusually long delay that is beyond the control of the worker (and the worker's representatives) until the hearing of the matter.
- (5) Any such interim award is to be made subject to the following conditions:

10

15

20

25

30

- (a) the worker must supply to the worker's employer or another specified person from time to time medical certificates relating to the incapacity for work to which the award relates,
 - (b) if the worker is partially incapacitated for work and is not suitably employed (within the meaning of section 43A) and has not yet exhausted the worker's entitlement to compensation under section 38, the worker must take steps to obtain suitable employment for the purposes of section 38 (as determined in accordance with section 38A). 5
- (6) Subject to any further order of the Compensation Court, interim payments of compensation under this section may be suspended while the worker is in breach of any conditions of the interim award or is guilty of unreasonable delay in taking some step in the proceedings on the dispute. 10
- (7) The Compensation Court can make a determination under this section whether or not at the time in respect of which the determination is made the worker is actually entitled to receive any weekly payment for incapacity or would be so entitled but for the operation of section 52A. 15
- (8) If the Compensation Court subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Court: 20
 - (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and 25
 - (b) orders the worker or other person to refund those payments or a specified part of those payments. 30
- (9) This section does not affect the recovery of weekly payments under section 58. 35

**[5] Schedule 6 Savings, transitional and other provisions, Part 4
Provisions relating to weekly payments of compensation**

Insert after clause 13:

14 Discontinuation of weekly payments after 2 years

- | | | |
|-----|--|----------|
| (1) | Section 52A (as inserted by the <i>WorkCover Legislation Amendment Act 1996</i>) applies only to compensation payable in respect of an injury received after the commencement of that section, except as provided by this clause. | 5 |
| (2) | Section 52A extends to the compensation payable in respect of an injury received before that commencement (but after the commencement of this Act), subject to the following: | 10 |
| (a) | A payment discontinuation notice must not be given until the person liable to make the weekly payments has given the worker a notice (a <i>preliminary notice</i>) informing the worker about the existence and effect of section 52A and alerting the worker to the possible application of that section to the worker. | 15
20 |
| (b) | The earliest that a preliminary notice can be given to the worker is when the worker would still have to receive at least 52 weeks of weekly payments of compensation in order to bring the total number of weeks of weekly payments received by the worker (both before and after that commencement) to 104 (even if this would result in the worker receiving the payments for more than 104 weeks). | 25 |
| (c) | The preliminary notice is to contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self insurers. | 30 |
| (d) | The earliest that a payment discontinuation notice under section 52A (3) can be given to a worker is: | 35 |

WorkCover Legislation Amendment Bill 1996 (No 2)

Schedule 1 Amendment of Workers Compensation Act 1987

- (i) after a period in respect of which the worker has received or is entitled to receive at least 40 weeks of weekly payments since the preliminary notice was given, and
 - (ii) at least 12 weeks before the end of the period of 104 weeks referred to in paragraph (b),
even if this would result in the worker receiving the payments for more than 104 weeks.
- (e) For the purposes of the determination of the period of 104 weeks referred to in paragraphs (b) and (d), a worker is presumed to have received no more than 52 weeks of weekly payments before that commencement, with the result that if a worker received more than 52 weeks of weekly payments before that commencement the number of weekly payments in excess of 52 is to be disregarded.
- (f) In the case of any period of incapacity for work to which clause 5A (2) or 5B (4) of Part 4 of Schedule 6 applies, section 52A (2) (a) is to apply as if it read as follows:
 - (a) the worker is partially incapacitated for work, is not suitably employed, has not yet exhausted his or her entitlement to compensation under section 38 and either:
 - (i) the worker's employer has not failed to provide suitable employment, or
 - (ii) the worker's employer has failed to provide suitable employment but the worker is not seeking suitable employment or receiving rehabilitation training,
as determined in accordance with section 38 as applicable to the case under clause 5A or 5B of Part 4 of Schedule 6.
- (3) Section 52A does not apply in any of the following cases:

-
- (a) a case where the worker is receiving or entitled to receive weekly payments of compensation under a court award made before the commencement of that section,
 - (b) a case where court proceedings in which the worker is claiming weekly payments of compensation for which the employer or insurer has denied liability (including proceedings on an application for a determination under section 51 where there has been such a denial) are pending as at the commencement of that section,
 - (c) a case where court proceedings on an application for a determination under section 51 are pending as at the commencement of section 52A and the employer or insurer has not denied liability to make weekly payments of compensation, but only if approval under section 51 (1) (c) has been given before that commencement.
 - (4) The giving of a preliminary notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.
 - (5) The regulations may provide that this clause or specified provisions of this clause do not apply in specified cases or classes of cases.
- 1.6 Amendments—deduction for previous injuries and pre-existing conditions and abnormalities**
- [1] Section 66A Registration of agreements for compensation**
- Omit “section 71” from section 66A (7).
Insert instead “this Part”.
- [2] Section 68 Proportionate loss of use**
- Insert after section 68 (3):
- (4) This section does not apply to a loss for which the Table to this Division provides a range of percentages.

-
- (6) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding litigation) that the deductible proportion (or the relevant part of it) is 10%, unless this assumption is at odds with the available evidence. 5
- (7) The reference in subsection (6) to medical evidence is, in the context of court proceedings, a reference to medical evidence properly admitted in the proceedings and accepted or preferred by the court. 10
- (8) Section 70 applies for the purpose of determining the extent (if any) that a worker's loss of hearing is due to presbycusis. 15
- 68B Deductions under section 68A—operation of sections 15, 16, 17 and 22**
- (1) When determining the compensation payable for a loss for the purposes of the apportionment of liability under section 22, there is to be no deduction under section 68A for any proportion of the loss that is due to an injury in respect of which liability is to be apportioned (but without affecting any deduction under that section for any proportion of the loss that is due to any other injury or that is due to any pre-existing condition or abnormality). 20 25
- (2) When determining the compensation payable in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality). 30 35
-

- (3) When determining the compensation payable in a case in which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration or that is due to any pre-existing condition or abnormality). 5 10 15
- (4) When determining the compensation payable in a case in which section 17 applies (loss of hearing) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality). 20 25
- [4] Section 71 Further loss of function—occupational diseases**
Omit the section.
- [5] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities)** 30
Insert at the end of the Part:
- 19 Deduction for previous injuries and pre-existing conditions and abnormalities**
- (1) The amendments made by the *WorkCover Legislation Amendment Act 1996* that amended sections 68 and 68A and repealed section 71 are taken to have had effect from the commencement of this Act, but not so as to affect: 35

-
- (a) any award of compensation made before the date of commencement of the amendments, or
 - (b) any compensation that a worker has received or agreed to receive before that date, or
 - (c) any award of, or compromise or settlement of a claim for, damages made before that date, or 5
 - (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before that date.
- (2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68A applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3. 10 15

1.7 Amendments—evidentiary value of medical panel reports and certificates

[1] Section 119 Limit on recovery of costs unreasonably incurred 20

Insert at the end of section 119 (2) (c):

, or

- (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by section 136 (1A)) and the court is of the opinion that the application was not reasonably justified. 25

[2] Section 131 Referral of medical disputes to referee or panel on application of worker or employer

Omit section 131 (5E).

[3] Section 136 Admissibility and evidentiary value of certificates and reports of medical referees and panels

5

Insert after section 136 (1):

(1A) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report. 10

(1B) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court. 15

[4] Schedule 6 Savings, transitional and other provisions, Part 12 Provisions relating to medical examinations and disputes

20

Insert after clause 7:

8 Evidentiary value of certificates and reports of medical panels

The amendments made to sections 119 and 136 of this Act by the *WorkCover Legislation Amendment Act 1996* extend to a certificate or report given after the commencement of those subsections in respect of an injury received before that commencement, but those amendments do not apply in respect of court proceedings pending or determined as at their commencement. 25
30

1.8 Amendments—claims excess payable by employers

[1] Section 160 Recovery of excess from employer

Omit the definition of *prescribed excess amount* from section 160 (1).

Insert instead:

5

prescribed excess amount in respect of a weekly compensation claim means an amount equal to the first 2 weeks of weekly payments of compensation on the claim.

[2] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurance

10

Insert after clause 18:

18A Claims excess—1996 amendment

(1) The amendment of section 160 of this Act by the *WorkCover Legislation Amendment Act 1996* applies in respect of injuries to workers that occurred after the commencement of the amendment. The section continues to apply (as if it had not been amended by that Act) in respect of injuries to workers that occurred before that commencement.

15

20

(2) A policy of insurance under this Act that relates to a period that includes any period after the commencement of the amendment referred to in subclause (1) is taken to include provision that gives effect to that amendment and subclause (1).

25

1.9 Amendments—marketing of legal and agency services

[1] Section 148B Definitions

Re-number paragraph (b) of the definition of *protected claim* as paragraph (c) and insert before that paragraph:

(b) a claim for the cost of provision of a hearing aid,
and

30

[2] Section 148B (1A)

Insert after section 148B (1):

- (1A) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 148C does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct. 5

[3] Section 148HA

Insert after section 148H: 10

148HA Power to restrict or ban recovery of costs by solicitors

- (1) The Authority can by notification given to insurers and self-insurers direct that a solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with. 15
- (2) Such a notification cannot be given unless the Authority is satisfied that the solicitor or a member of the firm of solicitors or a voting shareholder of the solicitor corporation is a director of or has a financial interest in an agent and: 20
- (a) the agent has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5), or 25
- (b) a director of the agent or other person concerned in the management of the agent has persistently engaged in any such conduct. 30
- (3) Before the Authority gives such a notification it must give the solicitor, solicitor corporation or firm of solicitors a reasonable opportunity to make written submissions to the Authority on the matter.

-
- (4) The effect of a notification under this section is that the solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force. 5
- (5) A solicitor, solicitor corporation or firm of solicitors aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders. 10
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the solicitor, solicitor corporation or firm of solicitors concerned. 15
- (7) For the purposes of this section, a *financial interest* in an agent is a share in the capital of the business conducted by the agent or any entitlement to receive any income derived from the business or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise. 20
- [4] Section 148J Past conduct included in assessing persistent conduct** 25
- Omit "section 148H and 148I".
Insert instead "sections 148H, 148HA and 148I".
- [5] Section 148J (2)**
- Insert at the end of section 148J (2): 30
- For the purposes of section 148HA, at least one instance of the conduct must have occurred after the commencement of that section.

[6] Section 148L

Insert after section 148K:

148L Regulation of advertising

- (1) The regulations may make provision for or with respect
to regulating (including prohibiting) conduct by any 5
person (including advertising) that relates to the
marketing of services to be provided by a lawyer or
agent in connection with claims for compensation under
this Act.
- (2) A regulation may not be made under this section except 10
with the concurrence of the Minister administering the
Legal Profession Act 1987.
- (3) Any such regulation can impose a penalty not exceeding
200 penalty units for any contravention of the
regulations. 15

**[7] Schedule 6 Savings, transitional and other provisions, Part 9
Provisions relating to notice of injury and claims for
compensation**

Insert at the end of clause 6:

- (2) The amendment made by the *WorkCover Legislation* 20
Amendment Act 1996 to insert section 148B (1A) is
made for the purpose of the removal of doubt and
accordingly is taken to have had effect from the
commencement of that section as inserted by the
WorkCover Legislation Amendment Act 1995. 25

**1.10 Amendments—transfer of WorkCover Authority
functions to Public Trustee**

[1] Sections 29 and 30

Omit “the Authority” and “The Authority” wherever occurring.
Insert instead “the Public Trustee” and “The Public Trustee” 30
respectively.

[2] Section 31 Payment in respect of dependent children

Omit "to the Authority".

Insert instead "to the Public Trustee in trust".

[3] Section 31

Omit "by the Authority".

Insert instead "by the Public Trustee".

5

[4] Section 83 Manner of payment of compensation

Insert "or the Public Trustee" after "the Authority" in section 83 (7).

[5] Section 85 Payments to Public Trustee for benefit of beneficiary

10

Omit "to the Authority" where firstly occurring.

Insert instead "to the Public Trustee in trust".

[6] Section 85

Omit "the Authority" and "The Authority" wherever occurring (except where firstly occurring).

Insert instead "the Public Trustee" and "The Public Trustee" respectively.

15

[7] Section 86

Omit the section. Insert instead:

86 Public Trustee's powers of investment

20

- (1) All amounts held by the Public Trustee under this Act are to form part of the common fund under section 36A of the *Public Trustee Act 1913* and are available for investment as provided by that Act.

- (2) A power conferred by this Division on the Public Trustee to invest money for the benefit of a person includes a power to invest the money in any manner that the Public Trustee is authorised under the *Public Trustee Act 1913* to invest money held in trust by the Public Trustee. 5

[8] Section 87 Unclaimed money

Omit "the Authority" wherever occurring.
Insert instead "the Public Trustee".

**[9] Schedule 6 Savings, transitional and other provisions, Part 19
Miscellaneous provisions 10**

Insert after clause 5:

6 Transfer of functions from Authority to Public Trustee

- (1) In this clause:

the Public Trustee amendments means the amendments made by Schedule 1.10 to the *WorkCover Legislation Amendment Act 1996*. 15
- (2) An application made under section 29 or 30 of this Act to or by the Authority before the commencement of the Public Trustee amendments is to continue and be dealt with as if those amendments had not been made. 20
- (3) A decision of the Authority under section 29 is, after the commencement of the Public Trustee amendments, taken to be a decision of the Public Trustee.
- (4) All money and investments belonging to the common fund, Income Suspense Account or Investment Guarantee Account referred to in section 86 of this Act are to be transferred from the Authority to the Public Trustee, to form part of the common fund under section 36A of the *Public Trustee Act 1913*. 25

-
- (5) Compensation paid to the Authority under section 85 of this Act is after the commencement of the Public Trustee amendments taken to have been paid to the Public Trustee under that section. Anything done by the Authority under sections 85–87 is after the commencement of the Public Trustee amendments taken to have been done by the Public Trustee. 5
- (6) The Public Trustee amendments do not affect any liability of the Authority that arose before the commencement of those amendments or that arises after that commencement in respect of any act or omission by the Authority before that commencement. Any such liability remains a liability of the Authority and does not (as a result of those amendments) become a liability of the Public Trustee. 10
15

1.11 Amendment—rules and regulations with respect to medical evidence

Section 137 Rules of Court and regulations with respect to medical evidence

Insert “(including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report)” after “panels” in section 137 (b). 20

1.12 Amendments—making a claim for compensation

[1] Section 92 Making of claim for compensation

Omit section 92 (4B). Insert instead: 25

- (4B) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority. 30

[2] Section 92 (6)

Insert after section 92 (5):

- (6) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or occupational rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliation officer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim. 5
10

1.13 Amendment—deemed employment of participants in workplace based training programs 15

Schedule 1 Deemed employment of workers

Insert after clause 17A:

18 Participants in training programs

- (1) The regulations may:
 - (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and 20
 - (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program. 25
- (2) A person who is a participant in a declared training program is for the purposes of this Act taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the 30

person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.

- (3) A payment that is declared by the regulations to be wages in respect of a participant in a declared training program is taken for the purposes of this Act to be the participant's wages in the employment by the person who provides the workplace based training. 5
- (4) Except to the extent that the regulations may otherwise provide, this clause does not apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause. 10

1.14 Amendment—penalty increase (requirement to keep register of injuries) 15

Section 90 Register of injuries

Omit "20 penalty units" from section 90 (5).
Insert instead "50 penalty units".

1.15 Amendments—misleading conduct by insurers and brokers 20

[1] Section 156A

Insert after section 156:

156A Misleading conduct by insurers and brokers with respect to business insurance 25

- (1) In this section:

broker means a person who is an insurance intermediary within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth.

insurer means a person who carries on insurance business as defined in the *Insurance Act 1973* of the Commonwealth.

- (2) An insurer or broker must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause an employer to believe that the insurance is comprehensive for business needs, unless:
- (a) the insurance includes the insurance required by this Act, or
- (b) the representation includes a clear statement to the effect that the insurance does not include workers compensation insurance and that workers compensation insurance is compulsory for employers.
- (3) An insurer or broker who contravenes this section is guilty of an offence.
Maximum penalty: 200 penalty units.
- (4) In any action under section 144, 145, 145A or 156 in respect of a failure by an employer to obtain or maintain in force a policy of insurance, the court hearing the action may order that a specified insurer or broker be joined as a party in the proceedings if the court thinks that the insurer or broker may be culpable in the matter.
- (5) An insurer or broker is culpable in a matter if it appears that the insurer or broker has engaged in conduct that constitutes a contravention of this section (whether or not the insurer or broker has been prosecuted for or convicted of an offence in respect of the contravention) and that conduct caused or contributed significantly to the failure by the employer to obtain or maintain the insurance concerned.
- (6) In any proceedings in which an insurer or broker is joined as a party under this section the court hearing the proceedings may, if satisfied that the insurer or broker is culpable in the matter, order that the insurer or broker is to be jointly and severally liable with any other party in respect of any amount ordered to be paid by that other

party in the proceedings or is to be separately liable, in place of that other party, as to the whole or a specified part of any amount that the other party might be ordered to pay in the proceedings.

[2] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurers 5

Insert after clause 24:

25 Conduct of insurers and brokers—1996 amendments

Section 156A (as inserted by the *WorkCover Legislation Amendment Act 1996*) does not apply in respect of conduct that took place before the commencement of the section. 10

1.16 Amendments—compliance with provisions that restrict commencement of proceedings

[1] Section 66B No proceedings to enter up award on agreement for compensation 15

Insert after section 66B (2):

- (3) The rules of the Compensation Court and the regulations may make provision for or with respect to:
 - (a) requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that the proceedings are not prevented by this section from being entertained by the Court, and 20
 - (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 25 30

[2] Section 106G

Insert after section 106F:

106G Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to: 5

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106D, 106E or 106F applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and 10
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 15

1.17 Amendment—rate of interest on common law damages

Section 151M Payment of interest 20

Omit section 151M (6). Insert instead:

- (6) **Rate of interest**
The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the *Supreme Court Act 1970* for the period concerned. 25

1.18 Amendments—special provisions for coal miners

[1] Schedule 6 Savings, transitional and other provisions, Part 4 Provisions relating to weekly payments of compensation

Omit paragraph (b) from clause 4A (1). Insert instead:

- (b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act. 5

[2] Schedule 6, Part 18 Special provision relating to coal miners 10

Insert after clause 1 (2):

- (3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:
 - (a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and 15
 - (b) occurs after the commencement of this subclause (as inserted by the *WorkCover Legislation Amendment Act 1996*), and 20
 - (c) occurs more than 78 weeks after the date of the injury concerned, and
 - (d) occurs during the first 104 weeks of incapacity.
- (4) For the purposes of subclause (3), the first 104 weeks of incapacity is the period of incapacity for work (whether total or partial, or both) of 104 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods. 25 30

[3] Schedule 6, Part 18

Insert after clause 1:

2 Regulations to modify or disapply 1996 amendments in relation to coal miners

- (1) In this clause: 5
- the 1996 amendments* means the amendments made to the *Workers Compensation Act 1987* by the *WorkCover Legislation Amendment Act 1996* except the amendments made by Schedule 1.3 (Journey claims) to that Act.
- (2) The regulations may make provision for or with respect to either or both of the following: 10
- (a) modifying any of the 1996 amendments in their application to or in respect of workers employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies, 15
- (b) exempting any such workers from the operation of any of the 1996 amendments.

1.19 Amendments—hearing loss claims

[1] Section 69A No compensation for less than 6% hearing loss

Omit section 69A (2). 20

[2] Section 69A (3)

Omit “or further loss” wherever occurring.

[3] Section 69A (3)

Omit “or that further loss reaches 5%”.

[4] Section 69A (4) (c) and (d)

Omit the paragraphs. Insert instead:

- (c) The worker suffers a further hearing loss of 5%.
The worker is entitled in the usual way to
compensation for the 5% further loss because the
6% threshold has already been passed (the total
loss is now 13%).

5

[5] Section 69B Employer's responsibility to pay for hearing loss tests

Omit "or further loss" wherever occurring in section 69B (1).

10

[6] Section 69B (1) (c)

Omit "(being hearing loss for which the worker has not received compensation under section 66)".

[7] Section 69B (1) (d)

Omit the paragraph.

15

[8] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities)

Insert at the end of clause 9:

- (4) The amendments made to sections 69A and 69B by the
WorkCover Legislation Amendment Act 1996 are taken
to have had effect on and from the commencement of
those sections.

20

1.20 Amendments—clarifications and miscellaneous amendments

[1] Section 94A Insurers to give notice and reasons when liability disputed

Insert at the end of section 94A (3): 5

The regulations may require an insurer to give a copy of
a notice under this section to the claimant's employer.

[2] Section 117 Regulations fixing maximum costs recoverable by legal practitioners

Omit "medical opinions" from section 117 (1) (b). 10
Insert instead "medical reports (including certificates)".

[3] Section 117 (3)

Omit "any report".
Insert instead "any medical report (including any certificate)".

[4] Section 118 Regulations fixing maximum fees recoverable by medical practitioners for medico-legal services 15

Omit "medical opinion or certificate" from section 118 (1) (a).
Insert instead "medical report (including any certificate)".

[5] Section 118 (3)

Insert after section 118 (2): 20

- (3) Regulations under this section can fix costs and amounts
by reference to costs and amounts fixed by regulations
under the *Legal Profession Act 1987*.

[6] Section 122 Solicitor/client costs in compensation proceedings

Insert after section 122 (6):

- (7) A reference in this section to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

5

[7] Section 152A Return-to-work plans for injured workers

Insert "or any such plan" after "section" in section 152A (3) (b).

[8] Section 270 Worker's right to information

Omit "refuse" from section 270 (2) (a). Insert instead "fail".

[9] Schedule 6 Savings, transitional and other provisions, Part 11 Provisions relating to proceedings before Commissioners and the Compensation Court

10

Omit "the insertion" from clause 1.
Insert instead "the commencement".

[10] Schedule 6, Part 11

15

Insert after clause 2:

3 Restrictions on commencement of proceedings

The provisions of Division 3A of Part 4 (sections 106D–106F) extend to apply in respect of an injury received before the commencement of that Division, but do not apply in respect of court proceedings pending or determined as at that commencement.

20

[11] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of the list of Acts in clause 1 (1):

WorkCover Legislation Amendment Act 1996

25

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Compensation Court Act 1984 No 89

Section 14A Medical referees

Insert at the end of section 14A (2): 5

The Chief Judge is to consult concerning proposed appointments of medical referees with such employer and employee organisations as the Minister may nominate from time to time or, in the absence of any such nomination, as the Chief Judge considers appropriate. 10

2.2 Construction Safety Act 1912 No 38

[1] Section 17A Riggers, divers, powdermen and certain other tradespersons

Insert after section 17A (2) (c): 15

(d) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person if the Authority is satisfied that the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence). In this paragraph, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*. 20 25

[2] Section 17A (5AA)

Omit "may suspend". Insert instead "may, at any time, suspend".

[3] Section 17A (5AA)

Insert at the end of section 17A (5AA):

If the Authority is satisfied that the holder of a powderman's certificate of competency who has been served with a notice under subsection (5) has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence) the Authority may, at any time, suspend the certificate of competency pending the determination of the matter by the Authority under this subsection.

5

10

In this subsection, **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

2.3 Dangerous Goods Act 1975 No 68

[1] Section 27A Commissioner of Police to report on explosives licences and permits

15

Insert after section 27A (2) (d):

(d1) whether the applicant has a history of violence or threats of violence, with **violence** including behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*,

20

(d2) whether there is an apprehended violence order under Part 15A of the *Crimes Act 1900* in force with respect to the applicant,

25

[2] Section 28A

Insert after section 28:

28A Special provision for suspension or cancellation of explosives licences and permits

(1) This section applies to licences and permits to which section 27A applies.

30

- (2) If the Authority thinks that the holder of a licence or permit cannot be trusted to have access to explosives because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence), the Authority may, at any time, by notice in writing served on the holder require the holder to appear before the Authority at a time and place specified in the notice to show cause why the licence or permit should not be cancelled. The Authority may also, at any time, suspend the licence or permit pending determination of the matter under subsection (3). 5 10
- (3) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of the licence or permit, the Authority may cancel the licence or permit. 15
- (4) If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a licence or permit to which this section applies (whether or not the person has been served with a notice under subsection (2)) the Authority may, at any time, suspend the licence or permit for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force. 20
- (5) This section does not limit any powers of the Authority under section 28 with respect to a licence or permit to which this section applies. 25
- (6) In this section **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*. 30

2.4 Industrial Relations Act 1996 No 17

Section 197A

Insert after section 197:

197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation	5
(1) This section applies to the decision of a member of the Commission or of a Local Court constituted by an Industrial or other Magistrate to acquit a person of an offence against the occupational health and safety legislation.	10
(2) This section applies to such a decision only if proceedings for the offence were instituted by an inspector appointed under that legislation or with the consent of the Minister or other officer authorised by that legislation to give such a consent.	15
(3) An appeal lies to the Full Bench of the Commission in Court Session against a decision to which this section applies. The appeal is not limited to a question of law.	
(4) The appeal may be made by the Attorney General, the Minister, the Director of Public Prosecutions or the prosecutor in the proceedings in which the decision appealed against was made.	20
(5) An appeal may be made within 21 days after the date of the decision appealed against or within such further time (not exceeding 3 months after that date) as the Full Bench or the Commission constituted by a Presidential Member allows. Further time may be allowed, either before or after the end of that 21-day period.	25
(6) Section 191 applies to an appeal under this section.	
(7) On an appeal under this section, the Full Bench may:	30
(a) dismiss the appeal, or	
(b) set aside the decision appealed against and make a decision in the matter in accordance with law (including the conviction and sentence of the defendant for the offence charged).	35

- (8) If the Full Bench on appeal convicts the defendant of the offence, the maximum penalty that the Full Bench may impose for the offence is the maximum penalty that the court that acquitted the defendant could have imposed for the offence. 5
- (9) This section has effect despite anything to the contrary in section 196 or 197.
- (10) In this section:
occupational health and safety legislation means the *Occupational Health and Safety Act 1983*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act. 10
- (11) This section does not apply to a decision made before the commencement of this section. 15

2.5 Occupational Health and Safety Act 1983 No 20

[1] Section 21B Plant or premises involved in dangerous occurrence

Omit "the first working day (that is, any day except a Saturday, Sunday or public holiday) after" from section 21B (5). 20
Insert instead "the day after".

[2] Section 31KA

Insert after section 31K:

31KA Power of inspectors to obtain information, documents and evidence 25

- (1) An inspector may, by notice in writing served on a person who is, on reasonable grounds, believed by the inspector to be capable of giving information, producing documents or giving evidence in relation to a possible contravention of the relevant legislation require the person to do any one or more of the following things: 30
 - (a) to give an inspector, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and

	within the time and in the manner specified in the notice, any such information of which the person has knowledge,	
	(b) to produce to an inspector, in accordance with the notice, any such documents,	5
	(c) to appear before an inspector at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.	
(2)	A notice under this section must contain a warning that a failure to comply with the notice is an offence.	10
(3)	An inspector may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.	
(4)	An inspector may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an inspector to be a true copy.	15 20
(5)	A certified copy provided under subsection (4) is receivable in all courts as if it were the original.	
(6)	Until a certified copy of a document is provided under subsection (4), the inspector who has possession of the document must, at such times and places as the inspector thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.	25
[3]	Section 31M	30
	Omit the section. Insert instead:	
	31M Protection from incrimination	
(1)	A person is not excused from making a statement, giving or furnishing information or evidence or producing a document in accordance with a requirement under this Division on the ground that the statement, information,	35

document or evidence may tend to incriminate the person.

- (2) However, any statement, information, document or evidence obtained from a person pursuant to a requirement under this Division is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 31N) if: 5
- (a) the person claims before making the statement or giving, furnishing or producing the information, document or evidence that it might tend to incriminate the person, or 10
- (b) the person's entitlement to make a claim of the kind referred to in paragraph (a) was not drawn to the person's attention before the statement was made or the information, document or evidence was given, furnished or produced. 15
- (3) Subsection (2) does not prevent the admission in evidence in proceedings against a body corporate of any statement, information, document or evidence obtained pursuant to a requirement under this Division from a person as a competent officer of the body corporate. 20

[4] Section 31N Offence: obstruction and compliance

Omit section 31N (e). Insert instead:

- (e) in purported compliance with a requirement under this Division, or in answer to a question of an inspector asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular. 25
30

[5] Section 31U Review of notices

Omit section 31U (4). Insert instead:

- (4) The WorkCover Authority is to review a notice that is the subject of a duly made application for review. The notice is stayed (unless it is a prohibition notice) from 35

when the application for review is received by the WorkCover Authority until the WorkCover Authority gives notice to the applicant of the result of the review. If the notice is a prohibition notice it can be stayed as provided by section 31UA.

5

[6] Section 31UA

Insert after section 31U:

31UA Application to Industrial Magistrate for stay of prohibition notice

- (1) If a person duly applies under section 31U for review of a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate for a stay of the notice. 10
- (2) A stay may be granted for such period as the court considers appropriate but not so as to extend past the time when notice of the result of the review is given to the applicant by the WorkCover Authority. 15
- (3) A stay may be granted on such conditions as the court considers appropriate and may be revoked or amended by the court. 20

2.6 WorkCover Legislation Amendment Act 1995 No 89

[1] Schedule 1 Amendment of Workers Compensation Act 1987

Omit so much of item [6] as inserts section 11A (2) of the *Workers Compensation Act 1987*.

[2] Schedule 1 [43]

25

Omit so much of the item as inserts section 94A (5) and (6) of the *Workers Compensation Act 1987*.

[3] Schedule 1 [49], [50]

Omit the items.

[4] Schedule 3 Amendment of Compensation Court Act 1984

Omit items [1] and [2].

[5] Schedule 3 [29]

Omit so much of the item as inserts clause 8 of Part 4 of Schedule 4 to the *Compensation Court Act 1984*.

5

2.7 WorkCover Administration Act 1989 No 120

Section 19 Payments into and from Fund

Insert after section 19 (2) (b):

- (b1) expenditure incurred by the Department of Industrial Relations in relation to the exercise (whether before or after the commencement of this paragraph) of the functions of conciliation officers under the *Workers Compensation Act 1987* by conciliation officers who are officers of that Department, including the remuneration payable to those officers, 10
- (b2) the remuneration (including allowances) of conciliation officers appointed under section 96 (1A) of the *Workers Compensation Act 1987*, 15

2.8 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83 20

[1] Section 23 Definitions

Insert in alphabetical order:

- relevant journey*, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity. 25
- 30

[2] Section 24 Injuries to which this Part applies

Omit section 24 (1) (b). Insert instead:

- (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.

[3] Sections 28A and 28B

5

Insert after section 28:

28A Compensation for damage to personal effects, vehicles and other things

- (1) Compensation is payable under this Part in respect of:

- (a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and 10
15
- (b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and 20
- (c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker. 25

- (2) The amount of the compensation payable under this section is such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss. 30

- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion. 5
- (4) Compensation is not payable under this section in respect of any loss: 10
- (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or
- (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source. 15
- (6) In this section *personal effects* does not include personal effects referred to in section 28.
- 28B Prohibition on increased premium under motor vehicle insurance policy** 20
- (1) In this section:
- authorised activity damage* means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5). 25
- insurance policy* means policy of insurance in respect of damage to or destruction or loss of a vehicle. 30
- insurer* means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

-
- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage. 5
Maximum penalty: 5 penalty units. 10
- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it. 15
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.
- [4] Section 32 Application of Principal Act**
- Omit "section 52" from section 32 (1) (c). 20
Insert instead "sections 52, 52A and 52B".
- [5] Schedule 1 Transitional and other provisions**
- Omit the heading to the Schedule. Insert instead:
- Schedule 1 Savings and transitional provisions** 25
(Section 35)
- Part 1 General**
- 1A Savings and transitional regulations**
- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts: 30
WorkCover Legislation Amendment Act 1996
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 5
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication. 10

**Part 2 Workers Compensation (Bush Fire,
Emergency and Rescue Services) Act 1987**

- [6] **Schedule 1, Part 3** 15
- Insert after clause 2:

**Part 3 WorkCover Legislation Amendment Act
1996**

3 Operation of amendments

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section. 20

2.9 Workers' Compensation (Dust Diseases) Act 1942 No 14

- [1] **Section 6 Constitution of Fund** 25

Insert "and" at the end of each of paragraphs (a) and (b) in section 6 (1) and insert at the end of section 6 (1) (d):

, and

- (e) all amounts that immediately before the commencement of this paragraph stood to the credit of the Dust Diseases Reserve Fund, and 30

-
- (f) all amounts contributed by insurers under subsection (6) or (7D).

[2] Section 6 (7C)

Omit the subsection. Insert instead:

- (7C) The WorkCover Authority is to pay the contributions paid by insurers under subsections (6) and (7) to the board for payment into the Fund.

5

[3] Section 6 (7D)

Omit "Dust Diseases Reserve".

[4] Section 8 Certificate of medical authority and rates of compensation

10

Omit "sections 51 and 52" from section 8 (3) (b).
Insert instead "sections 51, 52, 52A and 52B".

Second print



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of other Acts	2

Schedules

1 Amendment of Workers Compensation Act 1987	3
2 Amendment of other Acts	54

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

WorkCover Legislation Amendment Bill 1996 (No 2)

Act No , 1996

An Act to amend the *Workers Compensation Act 1987* to make further provision with respect to maximum workers compensation benefits, journey claims, deductions for previous injuries, weekly payments of compensation, conciliation of disputes, and in other respects; to amend certain other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *WorkCover Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

4 Amendment of other Acts

10

Each Act set out in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

1.1 Amendments—new conciliation arrangements

[1] Section 3 Definitions 5

Insert the following definitions in section 3 (1) in alphabetical order:

existing claim has the meaning given by section 87D.

new claim has the meaning given by section 87D.

Principal Conciliator means the Principal Conciliator appointed under section 87F. 10

[2] Section 3 (6)

Insert after section 3 (5):

- (6) Notes included in the text of this Act do not form part of this Act.

[3] Part 4, Division 1A 15

Insert before Division 1 of Part 4:

Division 1A Special conciliation provisions for new claims

87D Definitions

- (1) In this Act: 20

existing claim means, subject to any regulations under this section that modify this definition:

- (a) any claim for compensation made before the commencement of this Division (as inserted by the *WorkCover Legislation Amendment Act 1996*), and 25
- (b) any claim for compensation made after that commencement that is a further claim in respect of an injury for which a claim was made before that commencement.

new claim means any claim for compensation that is not an existing claim.

- (2) The regulations can modify the definition of ***existing claim*** in this section and for that purpose can contain provisions of a savings or transitional nature with respect to the application of provisions of this Part to and in respect of claims that as a result of any such regulations become or cease to be existing claims. 5
- (3) In modifying the definition of ***existing claim***, the regulations can even provide that no claims are existing claims (with the result that all claims will be dealt with as new claims), or alternatively can provide that all claims are existing claims (with the result that no claims will be dealt with as new claims). 10

87E Conciliation officers for new claims or existing claims 15

- (1) A person employed or appointed as a conciliation officer may be so employed or appointed as a conciliation officer for new claims (a ***new claims conciliation officer***) or for existing claims (an ***existing claims conciliation officer***). If a person is not employed or appointed as a new claims conciliation officer, the person is taken to have been employed or appointed as an existing claims conciliation officer. 20
- (2) New claims conciliation officers may be referred to as conciliation officers or as conciliators. 25

87F Principal Conciliator for new claims

- (1) Of the persons employed as new claims conciliation officers one is to be appointed by the head of the Department of Industrial Relations as the Principal Conciliator. When a person is appointed as the Principal Conciliator, any previous appointment of a person as the Principal Conciliator ceases to have effect. 30
- (2) The Principal Conciliator has and may exercise in respect of new claims all the functions of the Senior Conciliation Officer, in place of the Senior Conciliation Officer. 35

-
- (3) The Principal Conciliator can delegate to any new claims conciliation officer any of the Principal Conciliator's functions under this Part, including any function that the Principal Conciliator has under subsection (2), but cannot delegate this power of delegation.

5

[4] Section 96 Conciliation officers

Omit "Officers of the Authority" from section 96 (1).

Insert instead "Officers of the Authority or of the Department of Industrial Relations".

[5] Section 96 (4)

10

Insert after section 96 (3):

- (4) In the month of May in each year, the Minister is to prepare and forward to the WorkCover Authority an estimate of the expenditure to be incurred by the Department of Industrial Relations in relation to the exercise of the functions of conciliation officers under this Act by conciliation officers who are officers of that Department, including the remuneration payable to those officers.

15

[6] Section 97 Referral of disputes for conciliation

20

Insert at the end of section 97:

Note. Disputes involving new claims are to be referred to the Principal Conciliator, not the Senior Conciliation Officer.

- (3) The validity of a referral under this section is not affected by the incorrect referral of a dispute to the Principal Conciliator or the incorrect referral of a dispute to the Senior Conciliation Officer, and either can refer a dispute referred to him or her to the other.

25

[7] Section 98A Power of conciliation officer to require information

Insert after section 98A (5):

- (6) The regulations may make provision for or with respect to any of the following matters:
 - (a) excepting specified kinds of information or documents from the operation of this section, 5
 - (b) the circumstances in which information or documents furnished or produced to a conciliation officer under this section may or may not be furnished or produced by the conciliation officer to any other party to the dispute. 10

[8] Section 98D Certificates as to conciliation of disputes

Insert after section 98D (2):

- (2A) A conciliation officer is to issue a conciliation certificate for a dispute at the request of the Senior Conciliation Officer. 15
- (2B) The Senior Conciliation Officer may, either on the recommendation of the conciliation officer or on his or her own initiative, refer a conciliation certificate to the Registrar of the Compensation Court to form part of any file of the Court on proceedings commenced, or that may later be commenced, in relation to the dispute concerned. 20

[9] Section 98D (3)

Re-number paragraph (e) of section 98D (3) as paragraph (f) and omit "in the opinion of the conciliation officer" from that paragraph. 25

[10] Section 98D (3) (e)

Insert after section 98D (3) (d):

- (e) if conciliation was unsuccessful (wholly or partially) the reasons for that, 30

[11] Sections 98E, 98F

Insert after section 98D:

98E Time within which disputes must be referred to conciliation

The regulations may make provision for or with respect to limiting the time within which a dispute in respect of a new claim can be referred for conciliation under this Division. 5

98F Agreements arising from conciliation

- (1) If the conciliation of a dispute under this Division gives rise to an agreement between the parties, the conciliation officer may assist the parties in drafting written terms of agreement or in completing any approved standard form of agreement. 10
- (2) If the agreement relates to compensation under section 66 or 67, the conciliation officer can refer the agreement to the Senior Conciliation Officer for forwarding on to the Authority to be registered under section 66A. An application for registration of the agreement under section 66A is then taken to have been made by a party to the agreement. 15
20
- (3) If the agreement relates to other compensation, it may, with the consent of the parties, be registered by the Authority (in the case of existing claims) or by the head of the Department of Industrial Relations (in the case of new claims). 25
- (4) The following are examples of the provisions that an agreement arising from conciliation of a dispute can contain:
 - (a) provision for the employer or insurer to continue to pay compensation for a specified minimum period subject to compliance by the worker with specified conditions, 30

- (b) provisions to cover matters such as the supply of medical certificates certifying as to incapacity and requirements for participation by the worker in the employer's workplace rehabilitation program, rehabilitation training or other specified activities designed to assist the worker to return to work, 5
- (c) provisions designed to avoid or minimise further disputes between the parties, such as provisions requiring the parties to communicate with the conciliation officer concerning any dispute or potential dispute, 10
- (d) provision for a review of the agreement at a specified time, either by the parties alone or in consultation with the conciliation officer,
- (e) provisions designed to deal with any further disputes that might arise, so as to resolve them quickly while keeping costs to a minimum. 15

[12] Section 100A Proceedings before conciliation officers

Insert "in respect of an existing claim" after "dispute" wherever occurring in section 100A (2) and (3). 20

[13] Section 100A (2A)

Insert after section 100A (2):

- (2A) A person who is a party to any dispute in respect of a new claim is entitled to be represented by a barrister or solicitor, and by an agent of such a class as may be prescribed by the regulations. The conciliation officer may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party. 25
30

[14] Section 100A (3C)

Insert after section 100A (3B):

- (3C) A conciliation officer may, subject to any general directions by the Senior Conciliation Officer:

-
- (a) hold a conciliation conference with all relevant parties in attendance and, if the conciliation officer considers appropriate, with the employer (in the employer's own right, even if the employer is represented by an insurer) and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them, and 5
 - (b) in a case where the employer concerned is represented by an insurer—nevertheless communicate directly with the employer about the provision of suitable employment for the worker or any other matter connected with the dispute. 10

[15] Section 100A (7)

Insert after section 100A (6): 15

- (7) An agreement that arises from the conciliation of a dispute under this Division is not admissible in proceedings before the Compensation Court, except:
 - (a) when the parties to the agreement otherwise agree, or 20
 - (b) in such circumstances as the regulations may specify.

[16] Section 102 Existing claims for weekly payments—commencement of payments

Insert at the end of section 102 (1): 25

This section does not apply to new claims.

[17] Section 102A

Insert after section 102:

102A New claims for weekly payments—commencement of payments 30

- (1) This section applies only to new claims.
- (2) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.

- (3) If the person on whom a claim is made disputes liability to make the weekly payments within 21 days after the claim for compensation is duly made, the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) does not apply. 5

Note. If liability is disputed the worker can refer the dispute to conciliation. See section 106FB.

- (4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (2) and (3) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends: 10

- (a) 42 days after the claim for compensation is duly made, or
(b) when the person ceases to have that reasonable excuse, 15
whichever is earlier. 20

- (5) An employer has such a reasonable excuse if:
(a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and 25
(b) the employer has complied with all reasonable requests of the insurer with respect to the claim.

- (6) This section ceases to apply if the claim for compensation is withdrawn.

[18] Section 103 Offences—commencement of weekly payments 30

Insert “or 102A” after “102” in section 103 (1).

[19] Section 103A Disputes about continuation of weekly payments to be referred to conciliation within 21 days

Insert “This section does not apply if the claim concerned is a new claim.” after “Division 2.” in section 103A (1). 35

[20] Section 106CA

Insert before section 106D:

106CA Division applies only to existing claims

This Division applies only to court proceedings in respect of an existing claim.

5

[21] Part 4 Division 3B

Insert after Division 3A of Part 4:

Division 3B Restrictions on commencing court proceedings—new claims

106FA Division applies only to new claims

10

This Division applies only to court proceedings in respect of a new claim.

106FB Restrictions on commencing court proceedings about weekly payments

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 2 and either:
- 15
- 20
- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) the conciliation officer has given a notification under section 104 (3) in respect of the dispute, or
- (c) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- 25
- whichever happens first.
- (2) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 2 until:
- 30

- (a) the person on whom the claim is made has disputed liability to make the payments, or
 - (b) the time within which the person on whom the claim is made is required under section 102A to commence those payments has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute), 5
- whichever happens first.

Note. Section 102A allows up to 42 days for the commencement of weekly payments of compensation. 10

- (3) A worker cannot commence court proceedings in respect of **related compensation** until subsection (1) allows the commencement of proceedings in respect of the weekly payments of compensation concerned. Related compensation is compensation under Division 3 of Part 3 that relates to the incapacity for work to which the weekly payments of compensation relate. 15
- (4) This section does not prevent the commencement of court proceedings in any of the following circumstances:
 - (a) if the proceedings concern an application for a determination under section 53, 20
 - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,
 - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of this Act, 25
 - (d) any circumstances prescribed by the regulations.

106FC Restrictions on commencing court proceedings for lump sum compensation 30

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 unless a dispute about that compensation has been referred for conciliation under Division 2 and either:
 - (a) the conciliation officer has issued a certificate of conciliation outcome, or 35

-
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,
- whichever happens first.
- (2) A worker cannot refer a dispute about compensation under section 66 for conciliation under Division 2 until: 5
- (a) 12 weeks after the claim for the compensation is duly made, or
- (b) the person on whom the claim is made disputes liability to pay the compensation, 10
- whichever happens first.
- (3) If the person on whom a claim for compensation under section 66 is made has, within 12 weeks after that claim is duly made, duly applied under section 131 for reference of the matter to a medical panel, the worker can commence court proceedings in respect of that compensation 14 days after the panel has given its certificate under that section even if subsection (1) would otherwise prevent commencement of proceedings at that time. 15 20
- (4) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss or further loss, or for related compensation, until this section allows the commencement of proceedings in respect of compensation under section 66 for the loss or further loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss, further loss or pain and suffering. 25
- (5) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66, the proceedings are to be adjourned until: 30
- (a) 12 weeks after the claim was amended, or

- (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates, 5
whichever is later.
- (6) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (5). 10
- (7) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3). 15
- (8) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim. 20
25
- (9) This section does not prevent the commencement of court proceedings in any circumstances prescribed by the regulations. 30

106FD Restrictions on commencing court proceedings about hospital, medical and other expenses

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses) or Division 5 (Compensation for property damage) of Part 3 unless a dispute about that compensation has been referred for conciliation under Division 2 and either: 35

-
- (a) the conciliation officer has issued a certificate of conciliation outcome, or
 - (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,

5

whichever happens first.
 - (2) A worker cannot refer a dispute about compensation under Division 3 or 5 of Part 3 for conciliation under Division 2 until:
 - (a) 28 days after the claim for compensation is duly made, or
 - (b) the person on whom the claim is made disputes liability to pay the compensation,

10

whichever happens first.
 - (3) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 and are commenced in compliance with section 106FB or 106FC (whichever is appropriate).

15

20
 - (4) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.
 - (5) This section applies only in respect of new claims for compensation that are of a class prescribed by the regulations as subject to this section. If a new claim for compensation under Division 3 or 5 of Part 3 is not one in respect of which this section applies, section 106F applies in respect of the claim as if it were an existing claim.

25

30

106FE Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to:

35

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106FA, 106FB or 106FC applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and 5
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 10

[22] Section 107A

Omit the section. Insert instead:

107A Authority or DIR may intervene in proceedings 15

- (1) The Authority or the head of the Department of Industrial Relations (*the DIR*) has a right to be heard in any proceedings before the Compensation Court.
- (2) The Authority or the head of the DIR may, for that purpose, be represented by a barrister or solicitor or an officer of the Authority or the DIR or by any other person. 20
- (3) In any such proceedings the Authority or the head of the DIR may apply for an order for which any party may apply in those proceedings. 25

[23] Section 119 Limit on recovery of costs unreasonably incurred

Insert after section 119 (2):

- (2A) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 98D certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate. 30

[24] Schedule 2 Provisions relating to appointed conciliation officers

Omit "Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*." from clause 3.

[25] Schedule 6 Savings, transitional and other provisions, Part 10 Provisions relating to conciliation officers and weekly payments of compensation

5

Insert after clause 4:

5 New conciliation arrangements—WorkCover Legislation Amendment Act 1996

10

Amendments made by the *WorkCover Legislation Amendment Act 1996* do not affect the continuity of employment or appointment of conciliation officers employed or appointed as such immediately before the commencement of those amendments.

15

1.2 Amendments—employment required to be substantial contributing factor

[1] Section 9A

Insert after section 9:

9A No compensation payable unless employment substantial contributing factor to injury

20

(1) No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury.

(2) The following are examples of matters to be taken into account for the purposes of determining whether a worker's employment was a substantial contributing factor to an injury (but this subsection does not limit the kinds of matters that can be taken into account for the purposes of such a determination):

25

30

- (a) the time and place of the injury,
 - (b) the nature of the work performed and the particular tasks of that work,
 - (c) the duration of the employment,
 - (d) the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she has not been at work or had not worked in that employment, 5
 - (e) the worker's state of health before the injury and the existence of any hereditary risks, 10
 - (f) the worker's lifestyle and his or her activities outside the workplace.
 - (3) A worker's employment is not to be regarded as a substantial contributing factor to a worker's injury merely because of either or both of the following: 15
 - (a) the injury arose out of or in the course of, or arose both out of and in the course of, the worker's employment,
 - (b) the worker's incapacity for work, loss as referred to in Division 4 of Part 3, need for medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service as referred to in Division 3 of Part 3, or the worker's death, resulted from the injury. 20 25
 - (4) This section does not apply in respect of an injury to which section 10, 11 or 12 applies.
- [2] Section 11A No compensation for psychological injury caused by reasonable actions of employer**
- Omit section 11A (1). Insert instead: 30
- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the

employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.

- [3] Section 11A (5)** 5
Omit the subsection.
- [4] Section 11A (6)**
Insert at the end of section 11A (6):
This section does not affect section 9A (No compensation payable unless employment substantial contributing factor to injury). 10
- [5] Section 11A (7)**
Omit the subsection. Insert instead:
(7) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 92) use, for the purpose of describing the worker's condition, accepted medical terminology and not only terminology such as "stress" or "stress condition". 15
20
- [6] Section 11A (8)**
Insert "then (unless the insurer or self-insurer waives that requirement)" after "deficient claim".
- [7] Section 11A (8) (a)** 25
Insert "or 102A" after "102".
- [8] Section 16 Aggravation etc of diseases—employer liable, date of injury etc**
Omit "contributing factor" wherever occurring.
Insert instead "substantial contributing factor". 30

[9] Section 19 Diseases deemed work related

Omit "contributing factor" from section 19 (1) (b).
Insert instead "substantial contributing factor".

[10] Section 92 Making of claim for compensation

Insert after section 92 (1B): 5

(1C) The medical certificate required to accompany a claim for weekly payments of compensation must include a statement of the medical practitioner's opinion (however expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor. 10

(1D) If a claim is deficient because subsection (1C) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement): 15

(a) the claim is not considered to have been duly made for the purposes of section 102 or 102A until subsection (1C) is complied with, and 20

(b) court proceedings cannot be commenced in respect of the claim until subsection (1C) is complied with. 25

(1E) All claims for compensation under section 66 and 67 in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later. 30

**[11] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

Insert after clause 8:

**9 Requirement that employment be substantial
contributing factor**

5

(1) Section 9A of this Act, as inserted by the *WorkCover Legislation Amendment Act 1996*, does not apply to injuries received before the commencement of that section.

(2) The amendments made to section 11A, 16, 19 and 92 of this Act by Schedule 1.2 to the *WorkCover Legislation Amendment Act 1996* do not apply in respect of injuries received before the commencement of the amendments, except as provided by subclause (3).

10

(3) Section 92 (1C) and (1D) extend to apply to an injury that is a psychological injury within the meaning of section 11A that was received before the commencement of those subsections and after the commencement of section 11A.

15

(4) In a case where section 16 deems an injury to have happened within 12 months after the commencement of section 9A, sections 16 (2) and 68B (3) are, in their application in respect of any period of employment before the commencement of section 9A, to be read as if a reference in those provisions to employment that was a substantial contributing factor were a reference to employment that was a contributing factor (whether or not a substantial contributing factor).

20

25

1.3 Amendments—journey claims

[1] Section 10 Journey claims

30

Omit section 10 (1A). Insert instead:

(1A) Subsection (1) does not apply if the personal injury is attributable to the serious and wilful misconduct of the worker.

WorkCover Legislation Amendment Bill 1996 (No 2)

Schedule 1 Amendment of Workers Compensation Act 1987

[2] Section 10 (1B)

Omit “to have been caused by the fault of the worker”.
Insert instead “to be attributable to the serious and wilful misconduct of the worker”.

[3] Section 10 (1C)

5

Omit the subsection.

[4] Section 10 (6)

Omit the definition of *fault*.

**[5] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

10

Insert after clause 2 (2):

- (3) Section 10 of this Act continues to apply in respect of personal injury received by a worker before the commencement of the amendments made to that section by the *WorkCover Legislation Amendment Act 1996* as if those amendments had not been made.

15

**1.4 Amendments—reduction in maximum lump sum
compensation amounts**

[1] Section 66 Compensation for permanent injuries

Omit “\$132,300” from section 66 (1).
Insert instead “\$100,000”.

20

[2] Section 66 (2)

Omit “\$160,950”. Insert instead “\$121,000”.

[3] Section 67 Compensation for pain and suffering

Omit “\$66,200” from section 67 (1).
Insert instead “\$50,000”.

25

**[4] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert after clause 17:

- 18 Reduction in lump sum compensation amounts—1996 amendments** 5
- (1) Despite sections 66 (3) and 67 (6), the compensation payable under section 66 or 67 in respect of any injury received before the commencement of the amendment of those sections by the *WorkCover Legislation Amendment Act 1996* where no claim for compensation under either section 66 or 67 in respect of the injury was duly made by the worker before that commencement is to be calculated by reference to the requisite percentage of the amounts in force under the relevant section immediately after its amendment by that Act. 10 15
- (2) If proceedings are pending before the Compensation Court on a claim for compensation under section 66 or 67, a claim for that compensation is taken not to have been made before the commencement of the amendments to which this clause applies if: 20
- (a) no claim for that compensation was duly made before the commencement of those amendments, or
- (b) the worker did not, before the commencement of those amendments, give the employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation claimed. 25 30
- (3) If this clause results, in a particular case, in a greater amount of compensation being payable in that case than would have been the case in the absence of this clause, this clause does not apply in that particular case.

1.5 Amendments—discontinuation of weekly payments after 2 years

[1] Section 38A Determination of whether worker is seeking suitable employment

Insert “and section 52A (Discontinuation of weekly payments after 2 years)” after “section 38” in section 38A (1). 5

[2] Section 38A (4)

Insert “or to the discontinuation of weekly payments under section 52A” after “section 38”.

[3] Section 40A Assessment of incapacitated worker’s ability to earn 10

Insert “, and about the possible effects of section 52A on the worker” after “those entitlements” in section 40A (2).

[4] Sections 52A and 52B

Insert after section 52: 15

52A Discontinuation of weekly payments after 2 years

(1) Weekly payments of compensation in respect of incapacity for work are not payable for any period beyond the first 104 weeks of incapacity for work (whether total or partial, or a combination of both) in respect of which the worker has received or is entitled to receive weekly payments of compensation but only if one or more of the following paragraphs applies to the worker: 20

(a) the worker is partially incapacitated for work, is not suitably employed (within the meaning of section 43A, has not yet exhausted his or her entitlement to compensation under section 38 and is not seeking suitable employment (as determined in accordance with section 38A), 25
30

-
- (b) the worker has received weekly payments (including payments during rehabilitation training) under section 38 for the maximum total period under that section and has subsequently unreasonably refused an offer of suitable employment for which the worker received that training, 5
 - (c) the worker has received weekly payments under section 38 for the maximum total period under that section but has failed to obtain suitable employment solely because of the state of the labour market (rather than because of the effects of the worker's injury). 10
 - (2) Weekly payments of compensation do not cease to be payable pursuant to this section until the person liable to make the payments has given the worker at least 12 weeks notice (a **payment discontinuation notice**) of the person's intention to discontinue the payments under this section (even if this would result in the worker receiving the payments for more than 104 weeks). The regulations may provide that the requirements of this subsection do not apply in specified cases or classes of cases. 15
20
 - (3) The following requirements apply to a payment discontinuation notice:
 - (a) the notice must contain a statement of the grounds on which the notice is given (by reference to which of paragraphs (a), (b) and (c) of subsection (1) applies to the worker) and must inform the worker of action by the worker that is necessary to prevent the discontinuation of weekly payments, 25
30
 - (b) the notice is to be given to the worker personally or by post,
 - (c) the notice must contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers. 35
-

WorkCover Legislation Amendment Bill 1996 (No 2)

Schedule 1 Amendment of Workers Compensation Act 1987

- (4) The fact that the worker becomes temporarily totally incapacitated for work after service of the payment discontinuation notice does not prevent the discontinuation of weekly payments under this section.
- (5) The payment discontinuation notice can be given up to 12 weeks before the end of the 104 week period for which the worker has received or is entitled to receive weekly payments of compensation but cannot be given earlier than that. 5
- (6) Once a payment discontinuation notice is given, and so long as the worker has provided the worker's employer or the employer's insurer with a certificate by a medical practitioner specifying the expected duration of the worker's incapacity, the person paying the compensation must not discontinue payment, or reduce the amount, of the compensation during the period of incapacity so specified until the worker has received another 12 weeks of payments. This subsection does not apply to a reduction in weekly compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable (whether under section 38 or otherwise). 10 15 20
- (7) A payment discontinuation notice can be withdrawn at any time by notice given in writing to the worker by the person who gave the notice, and once withdrawn is taken never to have been given (for the purposes of the further operation of this section in relation to the cessation of weekly payments of compensation). This subsection does not prevent the giving of a further payment discontinuation notice. 25 30
- (8) In determining the period for which a worker has received or is entitled to receive weekly payments of compensation, separate periods during which the worker received or is entitled to receive those payments are to be aggregated. 35
- (9) The giving of a payment discontinuation notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

-
- (10) This section does not apply to a worker who is permanently and totally incapacitated for work and does not apply to compensation for an injury received by a person as a worker employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies.

5

52B Proceedings in Compensation Court on dispute about discontinuation of weekly payments after 2 years

- (1) The Compensation Court may, on the application of the worker made within 12 weeks after the payment discontinuation notice under section 52A is given to the worker, determine any dispute about the operation of that section. The regulations may make provision for modifying the operation of this subsection in its application to cases in which a payment discontinuation notice is not required to be given under section 52A.
- (2) The fact that proceedings are pending in the Compensation Court on an application under subsection (1) does not prevent the discontinuation of weekly payments of compensation in accordance with section 52A, subject to any order of the Compensation Court under this section.
- (3) When proceedings on a dispute are pending under subsection (1) before the Compensation Court, the worker may apply to the court for an interim award of weekly compensation pending determination of the dispute by the court.
- (4) The Compensation Court may make such an interim award only if satisfied that the worker is subject to hardship and there is likely to be an unusually long delay that is beyond the control of the worker (and the worker's representatives) until the hearing of the matter.
- (5) Any such interim award is to be made subject to the following conditions:

10

15

20

25

30

- (a) the worker must supply to the worker's employer or another specified person from time to time medical certificates relating to the incapacity for work to which the award relates,
 - (b) if the worker is partially incapacitated for work and is not suitably employed (within the meaning of section 43A) and has not yet exhausted the worker's entitlement to compensation under section 38, the worker must take steps to obtain suitable employment for the purposes of section 38 (as determined in accordance with section 38A). 5 10
- (6) Subject to any further order of the Compensation Court, interim payments of compensation under this section may be suspended while the worker is in breach of any conditions of the interim award or is guilty of unreasonable delay in taking some step in the proceedings on the dispute. 15
- (7) The Compensation Court can make a determination under this section whether or not at the time in respect of which the determination is made the worker is actually entitled to receive any weekly payment for incapacity or would be so entitled but for the operation of section 52A. 20
- (8) If the Compensation Court subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Court: 25
 - (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and 30
 - (b) orders the worker or other person to refund those payments or a specified part of those payments.
- (9) This section does not affect the recovery of weekly payments under section 58. 35

**[5] Schedule 6 Savings, transitional and other provisions, Part 4
Provisions relating to weekly payments of compensation**

Insert after clause 13:

14 Discontinuation of weekly payments after 2 years

- | | | |
|-----|--|----|
| (1) | Section 52A (as inserted by the <i>WorkCover Legislation Amendment Act 1996</i>) applies only to compensation payable in respect of an injury received after the commencement of that section, except as provided by this clause. | 5 |
| (2) | Section 52A extends to the compensation payable in respect of an injury received before that commencement (but after the commencement of this Act), subject to the following: | 10 |
| (a) | A payment discontinuation notice must not be given until the person liable to make the weekly payments has given the worker a notice (a <i>preliminary notice</i>) informing the worker about the existence and effect of section 52A and alerting the worker to the possible application of that section to the worker. | 15 |
| (b) | The earliest that a preliminary notice can be given to the worker is when the worker would still have to receive at least 52 weeks of weekly payments of compensation in order to bring the total number of weeks of weekly payments received by the worker (both before and after that commencement) to 104 (even if this would result in the worker receiving the payments for more than 104 weeks). | 20 |
| (c) | The preliminary notice is to contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self insurers. | 25 |
| (d) | The earliest that a payment discontinuation notice under section 52A (3) can be given to a worker is: | 30 |
| | | 35 |

-
- (i) after a period in respect of which the worker has received or is entitled to receive at least 40 weeks of weekly payments since the preliminary notice was given, and
 - (ii) at least 12 weeks before the end of the period of 104 weeks referred to in paragraph (b), 5

even if this would result in the worker receiving the payments for more than 104 weeks.
 - (e) For the purposes of the determination of the period of 104 weeks referred to in paragraphs (b) and (d), a worker is presumed to have received no more than 52 weeks of weekly payments before that commencement, with the result that if a worker received more than 52 weeks of weekly payments before that commencement the number of weekly payments in excess of 52 is to be disregarded. 10 15
 - (f) In the case of any period of incapacity for work to which clause 5A (2) or 5B (4) of Part 4 of Schedule 6 applies, section 52A (2) (a) is to apply as if it read as follows: 20
 - (a) the worker is partially incapacitated for work, is not suitably employed, has not yet exhausted his or her entitlement to compensation under section 38 and either: 25
 - (i) the worker's employer has not failed to provide suitable employment, or
 - (ii) the worker's employer has failed to provide suitable employment but the worker is not seeking suitable employment or receiving rehabilitation training, 30

as determined in accordance with section 38 as applicable to the case under clause 5A or 5B of Part 4 of Schedule 6. 35
 - (3) Section 52A does not apply in any of the following cases:

-
- (a) a case where the worker is receiving or entitled to receive weekly payments of compensation under a court award made before the commencement of that section,
 - (b) a case where court proceedings in which the worker is claiming weekly payments of compensation for which the employer or insurer has denied liability (including proceedings on an application for a determination under section 51 where there has been such a denial) are pending as at the commencement of that section,
 - (c) a case where court proceedings on an application for a determination under section 51 are pending as at the commencement of section 52A and the employer or insurer has not denied liability to make weekly payments of compensation, but only if approval under section 51 (1) (c) has been given before that commencement.
 - (4) The giving of a preliminary notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.
 - (5) The regulations may provide that this clause or specified provisions of this clause do not apply in specified cases or classes of cases.
- 1.6 Amendments—deduction for previous injuries and pre-existing conditions and abnormalities**
- [1] Section 66A Registration of agreements for compensation**
- Omit “section 71” from section 66A (7).
Insert instead “this Part”.
- [2] Section 68 Proportionate loss of use**
- Insert after section 68 (3):
- (4) This section does not apply to a loss for which the Table to this Division provides a range of percentages.

-
- (6) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding litigation) that the deductible proportion (or the relevant part of it) is 10%, unless this assumption is at odds with the available evidence.

5
 - (7) The reference in subsection (6) to medical evidence is, in the context of court proceedings, a reference to medical evidence properly admitted in the proceedings and accepted or preferred by the court.

10
 - (8) Section 70 applies for the purpose of determining the extent (if any) that a worker's loss of hearing is due to presbycusis.

15

68B Deductions under section 68A—operation of sections 15, 16, 17 and 22

- (1) When determining the compensation payable for a loss for the purposes of the apportionment of liability under section 22, there is to be no deduction under section 68A for any proportion of the loss that is due to an injury in respect of which liability is to be apportioned (but without affecting any deduction under that section for any proportion of the loss that is due to any other injury or that is due to any pre-existing condition or abnormality).

20

25
- (2) When determining the compensation payable in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality).

30

35

- (3) When determining the compensation payable in a case in which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration or that is due to any pre-existing condition or abnormality). 5 10 15
- (4) When determining the compensation payable in a case in which section 17 applies (loss of hearing) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality). 20 25

[4] Section 71 Further loss of function—occupational diseases

Omit the section.

[5] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities) 30

Insert at the end of the Part:

19 Deduction for previous injuries and pre-existing conditions and abnormalities

- (1) The amendments made by the *WorkCover Legislation Amendment Act 1996* that amended sections 68 and 68A and repealed section 71 are taken to have had effect from the commencement of this Act, but not so as to affect: 35

-
- (a) any award of compensation made before the date of commencement of the amendments, or
 - (b) any compensation that a worker has received or agreed to receive before that date, or
 - (c) any award of, or compromise or settlement of a claim for, damages made before that date, or 5
 - (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before that date.
- (2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68A applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3. 10 15

1.7 Amendments—evidentiary value of medical panel reports and certificates

[1] Section 119 Limit on recovery of costs unreasonably incurred 20

Insert at the end of section 119 (2) (c):

, or

- (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by section 136 (1A)) and the court is of the opinion that the application was not reasonably justified. 25

[2] Section 131 Referral of medical disputes to referee or panel on application of worker or employer

Omit section 131 (5E).

[3] Section 136 Admissibility and evidentiary value of certificates and reports of medical referees and panels

5

Insert after section 136 (1):

(1A) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report. 10

(1B) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court. 15

[4] Schedule 6 Savings, transitional and other provisions, Part 12 Provisions relating to medical examinations and disputes

20

Insert after clause 7:

8 Evidentiary value of certificates and reports of medical panels

The amendments made to sections 119 and 136 of this Act by the *WorkCover Legislation Amendment Act 1996* extend to a certificate or report given after the commencement of those subsections in respect of an injury received before that commencement, but those amendments do not apply in respect of court proceedings pending or determined as at their commencement. 25
30

1.8 Amendments—claims excess payable by employers

[1] Section 160 Recovery of excess from employer

Omit the definition of *prescribed excess amount* from section 160 (1).

Insert instead:

5

prescribed excess amount in respect of a weekly compensation claim means an amount equal to the first 2 weeks of weekly payments of compensation on the claim.

[2] Schedule 6 Savings, transitional and other provisions, Part 15 Provisions relating to insurance

10

Insert after clause 18:

18A Claims excess—1996 amendment

(1) The amendment of section 160 of this Act by the *WorkCover Legislation Amendment Act 1996* applies in respect of injuries to workers that occurred after the commencement of the amendment. The section continues to apply (as if it had not been amended by that Act) in respect of injuries to workers that occurred before that commencement.

15

20

(2) A policy of insurance under this Act that relates to a period that includes any period after the commencement of the amendment referred to in subclause (1) is taken to include provision that gives effect to that amendment and subclause (1).

25

1.9 Amendments—marketing of legal and agency services

[1] Section 148B Definitions

Re-number paragraph (b) of the definition of *protected claim* as paragraph (c) and insert before that paragraph:

(b) a claim for the cost of provision of a hearing aid, and

30

[2] Section 148B (1A)

Insert after section 148B (1):

- (1A) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 148C does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct. 5

[3] Section 148HA

Insert after section 148H: 10

148HA Power to restrict or ban recovery of costs by solicitors

- (1) The Authority can by notification given to insurers and self-insurers direct that a solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with. 15
- (2) Such a notification cannot be given unless the Authority is satisfied that the solicitor or a member of the firm of solicitors or a voting shareholder of the solicitor corporation is a director of or has a financial interest in an agent and: 20
- (a) the agent has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5), or 25
- (b) a director of the agent or other person concerned in the management of the agent has persistently engaged in any such conduct. 30
- (3) Before the Authority gives such a notification it must give the solicitor, solicitor corporation or firm of solicitors a reasonable opportunity to make written submissions to the Authority on the matter.

-
- (4) The effect of a notification under this section is that the solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force. 5
- (5) A solicitor, solicitor corporation or firm of solicitors aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders. 10
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the solicitor, solicitor corporation or firm of solicitors concerned. 15
- (7) For the purposes of this section, a *financial interest* in an agent is a share in the capital of the business conducted by the agent or any entitlement to receive any income derived from the business or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise. 20
- [4] Section 148J Past conduct included in assessing persistent conduct** 25
- Omit "section 148H and 148I".
 Insert instead "sections 148H, 148HA and 148I".
- [5] Section 148J (2)**
- Insert at the end of section 148J (2): 30
- For the purposes of section 148HA, at least one instance of the conduct must have occurred after the commencement of that section.

[6] Section 148L

Insert after section 148K:

148L Regulation of advertising

- (1) The regulations may make provision for or with respect
to regulating (including prohibiting) conduct by any 5
person (including advertising) that relates to the
marketing of services to be provided by a lawyer or
agent in connection with claims for compensation under
this Act.
- (2) A regulation may not be made under this section except 10
with the concurrence of the Minister administering the
Legal Profession Act 1987.
- (3) Any such regulation can impose a penalty not exceeding
200 penalty units for any contravention of the
regulations. 15

**[7] Schedule 6 Savings, transitional and other provisions, Part 9
Provisions relating to notice of injury and claims for
compensation**

Insert at the end of clause 6:

- (2) The amendment made by the *WorkCover Legislation* 20
Amendment Act 1996 to insert section 148B (1A) is
made for the purpose of the removal of doubt and
accordingly is taken to have had effect from the
commencement of that section as inserted by the
WorkCover Legislation Amendment Act 1995. 25

**1.10 Amendments—transfer of WorkCover Authority
functions to Public Trustee**

[1] Sections 29 and 30

Omit “the Authority” and “The Authority” wherever occurring.
Insert instead “the Public Trustee” and “The Public Trustee” 30
respectively.

[2] Section 31 Payment in respect of dependent children

Omit "to the Authority".

Insert instead "to the Public Trustee in trust".

[3] Section 31

Omit "by the Authority".

Insert instead "by the Public Trustee".

5

[4] Section 83 Manner of payment of compensation

Insert "or the Public Trustee" after "the Authority" in section 83 (7).

[5] Section 85 Payments to Public Trustee for benefit of beneficiary

10

Omit "to the Authority" where firstly occurring.

Insert instead "to the Public Trustee in trust".

[6] Section 85

Omit "the Authority" and "The Authority" wherever occurring (except where firstly occurring).

Insert instead "the Public Trustee" and "The Public Trustee" respectively.

15

[7] Section 86

Omit the section. Insert instead:

86 Public Trustee's powers of investment

20

- (1) All amounts held by the Public Trustee under this Act are to form part of the common fund under section 36A of the *Public Trustee Act 1913* and are available for investment as provided by that Act.

- (2) A power conferred by this Division on the Public Trustee to invest money for the benefit of a person includes a power to invest the money in any manner that the Public Trustee is authorised under the *Public Trustee Act 1913* to invest money held in trust by the Public Trustee. 5

[8] Section 87 Unclaimed money

Omit "the Authority" wherever occurring.
Insert instead "the Public Trustee".

**[9] Schedule 6 Savings, transitional and other provisions, Part 19
Miscellaneous provisions** 10

Insert after clause 5:

6 Transfer of functions from Authority to Public Trustee

- (1) In this clause:
- the Public Trustee amendments* means the amendments made by Schedule 1.10 to the *WorkCover Legislation Amendment Act 1996*. 15
- (2) An application made under section 29 or 30 of this Act to or by the Authority before the commencement of the Public Trustee amendments is to continue and be dealt with as if those amendments had not been made. 20
- (3) A decision of the Authority under section 29 is, after the commencement of the Public Trustee amendments, taken to be a decision of the Public Trustee.
- (4) All money and investments belonging to the common fund, Income Suspense Account or Investment Guarantee Account referred to in section 86 of this Act are to be transferred from the Authority to the Public Trustee, to form part of the common fund under section 36A of the *Public Trustee Act 1913*. 25

-
- (5) Compensation paid to the Authority under section 85 of this Act is after the commencement of the Public Trustee amendments taken to have been paid to the Public Trustee under that section. Anything done by the Authority under sections 85–87 is after the commencement of the Public Trustee amendments taken to have been done by the Public Trustee. 5
- (6) The Public Trustee amendments do not affect any liability of the Authority that arose before the commencement of those amendments or that arises after that commencement in respect of any act or omission by the Authority before that commencement. Any such liability remains a liability of the Authority and does not (as a result of those amendments) become a liability of the Public Trustee. 10 15

1.11 Amendment—rules and regulations with respect to medical evidence

Section 137 Rules of Court and regulations with respect to medical evidence

Insert “(including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report)” after “panels” in section 137 (b). 20

1.12 Amendments—making a claim for compensation

[1] Section 92 Making of claim for compensation

Omit section 92 (4B). Insert instead: 25

- (4B) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority. 30

[2] Section 92 (6)

Insert after section 92 (5):

- (6) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or occupational rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliation officer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.
- 5
10

1.13 Amendment—deemed employment of participants in workplace based training programs

15

Schedule 1 Deemed employment of workers

Insert after clause 17A:

18 Participants in training programs

- (1) The regulations may:
- (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and
- (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program.
- (2) A person who is a participant in a declared training program is for the purposes of this Act taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the
- 20
25
30

person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.

- (3) A payment that is declared by the regulations to be wages in respect of a participant in a declared training program is taken for the purposes of this Act to be the participant's wages in the employment by the person who provides the workplace based training. 5

- (4) Except to the extent that the regulations may otherwise provide, this clause does not apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause. 10

1.14 Amendment—penalty increase (requirement to keep register of injuries) 15

Section 90 Register of injuries

Omit "20 penalty units" from section 90 (5).
Insert instead "50 penalty units".

1.15 Amendments—misleading conduct by insurers and brokers 20

[1] Section 156A

Insert after section 156:

156A Misleading conduct by insurers and brokers with respect to business insurance 25

- (1) In this section:

broker means a person who is an insurance intermediary within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth.

insurer means a person who carries on insurance business as defined in the *Insurance Act 1973* of the Commonwealth.

- (2) An insurer or broker must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause an employer to believe that the insurance is comprehensive for business needs, unless:
- (a) the insurance includes the insurance required by this Act, or
- (b) the representation includes a clear statement to the effect that the insurance does not include workers compensation insurance and that workers compensation insurance is compulsory for employers.
- (3) An insurer or broker who contravenes this section is guilty of an offence.
- Maximum penalty: 200 penalty units.
- (4) In any action under section 144, 145, 145A or 156 in respect of a failure by an employer to obtain or maintain in force a policy of insurance, the court hearing the action may order that a specified insurer or broker be joined as a party in the proceedings if the court thinks that the insurer or broker may be culpable in the matter.
- (5) An insurer or broker is culpable in a matter if it appears that the insurer or broker has engaged in conduct that constitutes a contravention of this section (whether or not the insurer or broker has been prosecuted for or convicted of an offence in respect of the contravention) and that conduct caused or contributed significantly to the failure by the employer to obtain or maintain the insurance concerned.
- (6) In any proceedings in which an insurer or broker is joined as a party under this section the court hearing the proceedings may, if satisfied that the insurer or broker is culpable in the matter, order that the insurer or broker is to be jointly and severally liable with any other party in respect of any amount ordered to be paid by that other

party in the proceedings or is to be separately liable, in place of that other party, as to the whole or a specified part of any amount that the other party might be ordered to pay in the proceedings.

[2] Schedule 6 Savings, transitional and other provisions, Part 15 5
Provisions relating to insurers

Insert after clause 24:

25 Conduct of insurers and brokers—1996 amendments

Section 156A (as inserted by the *WorkCover Legislation Amendment Act 1996*) does not apply in respect of conduct that took place before the commencement of the section. 10

1.16 Amendments—compliance with provisions that restrict commencement of proceedings

[1] Section 66B No proceedings to enter up award on agreement for compensation 15

Insert after section 66B (2):

- (3) The rules of the Compensation Court and the regulations may make provision for or with respect to:
 - (a) requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that the proceedings are not prevented by this section from being entertained by the Court, and 20
 - (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 25
- 30

[2] Section 106G

Insert after section 106F:

106G Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to: 5

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106D, 106E or 106F applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and 10
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it. 15

1.17 Amendment—rate of interest on common law damages

Section 151M Payment of interest 20

Omit section 151M (6). Insert instead:

- (6) **Rate of interest**
The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the *Supreme Court Act 1970* for the period concerned. 25

1.18 Amendments—special provisions for coal miners

**[1] Schedule 6 Savings, transitional and other provisions, Part 4
Provisions relating to weekly payments of compensation**

Omit paragraph (b) from clause 4A (1). Insert instead:

- (b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act. 5

[2] Schedule 6, Part 18 Special provision relating to coal miners 10

Insert after clause 1 (2):

- (3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:
 - (a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and 15
 - (b) occurs after the commencement of this subclause (as inserted by the *WorkCover Legislation Amendment Act 1996*), and 20
 - (c) occurs more than 78 weeks after the date of the injury concerned, and
 - (d) occurs during the first 104 weeks of incapacity.
- (4) For the purposes of subclause (3), the first 104 weeks of incapacity is the period of incapacity for work (whether total or partial, or both) of 104 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods. 25 30

[3] Schedule 6, Part 18

Insert after clause 1:

2 Regulations to modify or disapply 1996 amendments in relation to coal miners

- (1) In this clause: 5
- the 1996 amendments* means the amendments made to the *Workers Compensation Act 1987* by the *WorkCover Legislation Amendment Act 1996* except the amendments made by Schedule 1.3 (Journey claims) to that Act.
- (2) The regulations may make provision for or with respect to either or both of the following: 10
- (a) modifying any of the 1996 amendments in their application to or in respect of workers employed in or about a mine to which the *Coal Mines Regulation Act 1982* applies, 15
- (b) exempting any such workers from the operation of any of the 1996 amendments.

1.19 Amendments—hearing loss claims

[1] Section 69A No compensation for less than 6% hearing loss

Omit section 69A (2). 20

[2] Section 69A (3)

Omit “or further loss” wherever occurring.

[3] Section 69A (3)

Omit “or that further loss reaches 5%”.

[4] Section 69A (4) (c) and (d)

Omit the paragraphs. Insert instead:

- (c) The worker suffers a further hearing loss of 5%.
The worker is entitled in the usual way to
compensation for the 5% further loss because the
6% threshold has already been passed (the total
loss is now 13%).

5

[5] Section 69B Employer's responsibility to pay for hearing loss tests

Omit "or further loss" wherever occurring in section 69B (1).

10

[6] Section 69B (1) (c)

Omit "(being hearing loss for which the worker has not received compensation under section 66)".

[7] Section 69B (1) (d)

Omit the paragraph.

15

[8] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities)

Insert at the end of clause 9:

- (4) The amendments made to sections 69A and 69B by the
WorkCover Legislation Amendment Act 1996 are taken
to have had effect on and from the commencement of
those sections.

20

1.20 Amendments—clarifications and miscellaneous amendments

[1] Section 94A Insurers to give notice and reasons when liability disputed

Insert at the end of section 94A (3):

5

The regulations may require an insurer to give a copy of a notice under this section to the claimant's employer.

[2] Section 117 Regulations fixing maximum costs recoverable by legal practitioners

Omit "medical opinions" from section 117 (1) (b).

10

Insert instead "medical reports (including certificates)".

[3] Section 117 (3)

Omit "any report".

Insert instead "any medical report (including any certificate)".

[4] Section 118 Regulations fixing maximum fees recoverable by medical practitioners for medico-legal services

15

Omit "medical opinion or certificate" from section 118 (1) (a).

Insert instead "medical report (including any certificate)".

[5] Section 118 (3)

Insert after section 118 (2):

20

- (3) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.

[6] Section 122 Solicitor/client costs in compensation proceedings

Insert after section 122 (6):

- (7) A reference in this section to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

5

[7] Section 152A Return-to-work plans for injured workers

Insert "or any such plan" after "section" in section 152A (3) (b).

[8] Section 270 Worker's right to information

Omit "refuse" from section 270 (2) (a). Insert instead "fail".

[9] Schedule 6 Savings, transitional and other provisions, Part 11 Provisions relating to proceedings before Commissioners and the Compensation Court

10

Omit "the insertion" from clause 1.
Insert instead "the commencement".

[10] Schedule 6, Part 11

15

Insert after clause 2:

3 Restrictions on commencement of proceedings

The provisions of Division 3A of Part 4 (sections 106D–106F) extend to apply in respect of an injury received before the commencement of that Division, but do not apply in respect of court proceedings pending or determined as at that commencement.

20

[11] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of the list of Acts in clause 1 (1):

WorkCover Legislation Amendment Act 1996

25

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Compensation Court Act 1984 No 89

Section 14A Medical referees

Insert at the end of section 14A (2): 5

The Chief Judge is to consult concerning proposed appointments of medical referees with such employer and employee organisations as the Minister may nominate from time to time or, in the absence of any such nomination, as the Chief Judge considers appropriate. 10

2.2 Construction Safety Act 1912 No 38

[1] Section 17A Riggers, divers, powdermen and certain other tradespersons

Insert after section 17A (2) (c): 15

(d) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person if the Authority is satisfied that the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence). In this paragraph, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*. 20 25

[2] Section 17A (5AA)

Omit "may suspend". Insert instead "may, at any time, suspend".

[3] Section 17A (5AA)

Insert at the end of section 17A (5AA):

If the Authority is satisfied that the holder of a powderman's certificate of competency who has been served with a notice under subsection (5) has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence) the Authority may, at any time, suspend the certificate of competency pending the determination of the matter by the Authority under this subsection. 5 10

In this subsection, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

2.3 Dangerous Goods Act 1975 No 68**[1] Section 27A Commissioner of Police to report on explosives licences and permits 15**

Insert after section 27A (2) (d):

(d1) whether the applicant has a history of violence or threats of violence, with *violence* including behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*, 20

(d2) whether there is an apprehended violence order under Part 15A of the *Crimes Act 1900* in force with respect to the applicant, 25

[2] Section 28A

Insert after section 28:

28A Special provision for suspension or cancellation of explosives licences and permits

(1) This section applies to licences and permits to which section 27A applies. 30

- (2) If the Authority thinks that the holder of a licence or permit cannot be trusted to have access to explosives because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence), the Authority may, at any time, by notice in writing served on the holder require the holder to appear before the Authority at a time and place specified in the notice to show cause why the licence or permit should not be cancelled. The Authority may also, at any time, suspend the licence or permit pending determination of the matter under subsection (3). 5 10
- (3) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of the licence or permit, the Authority may cancel the licence or permit. 15
- (4) If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a licence or permit to which this section applies (whether or not the person has been served with a notice under subsection (2)) the Authority may, at any time, suspend the licence or permit for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force. 20
- (5) This section does not limit any powers of the Authority under section 28 with respect to a licence or permit to which this section applies. 25
- (6) In this section **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*. 30

2.4 Industrial Relations Act 1996 No 17

Section 197A

Insert after section 197:

197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation	5
(1) This section applies to the decision of a member of the Commission or of a Local Court constituted by an Industrial or other Magistrate to acquit a person of an offence against the occupational health and safety legislation.	10
(2) This section applies to such a decision only if proceedings for the offence were instituted by an inspector appointed under that legislation or with the consent of the Minister or other officer authorised by that legislation to give such a consent.	15
(3) An appeal lies to the Full Bench of the Commission in Court Session against a decision to which this section applies. The appeal is not limited to a question of law.	
(4) The appeal may be made by the Attorney General, the Minister, the Director of Public Prosecutions or the prosecutor in the proceedings in which the decision appealed against was made.	20
(5) An appeal may be made within 21 days after the date of the decision appealed against or within such further time (not exceeding 3 months after that date) as the Full Bench or the Commission constituted by a Presidential Member allows. Further time may be allowed, either before or after the end of that 21-day period.	25
(6) Section 191 applies to an appeal under this section.	
(7) On an appeal under this section, the Full Bench may:	30
(a) dismiss the appeal, or	
(b) set aside the decision appealed against and make a decision in the matter in accordance with law (including the conviction and sentence of the defendant for the offence charged).	35

- (8) If the Full Bench on appeal convicts the defendant of the offence, the maximum penalty that the Full Bench may impose for the offence is the maximum penalty that the court that acquitted the defendant could have imposed for the offence. 5
- (9) This section has effect despite anything to the contrary in section 196 or 197.
- (10) In this section:
occupational health and safety legislation means the *Occupational Health and Safety Act 1983*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act. 10
- (11) This section does not apply to a decision made before the commencement of this section. 15

2.5 Occupational Health and Safety Act 1983 No 20

[1] Section 21B Plant or premises involved in dangerous occurrence

Omit "the first working day (that is, any day except a Saturday, Sunday or public holiday) after" from section 21B (5). 20
Insert instead "the day after".

[2] Section 31KA

Insert after section 31K:

31KA Power of inspectors to obtain information, documents and evidence 25

- (1) An inspector may, by notice in writing served on a person who is, on reasonable grounds, believed by the inspector to be capable of giving information, producing documents or giving evidence in relation to a possible contravention of the relevant legislation require the person to do any one or more of the following things: 30
- (a) to give an inspector, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and

	within the time and in the manner specified in the notice, any such information of which the person has knowledge,	
	(b) to produce to an inspector, in accordance with the notice, any such documents,	5
	(c) to appear before an inspector at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.	
(2)	A notice under this section must contain a warning that a failure to comply with the notice is an offence.	10
(3)	An inspector may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.	
(4)	An inspector may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an inspector to be a true copy.	15
(5)	A certified copy provided under subsection (4) is receivable in all courts as if it were the original.	20
(6)	Until a certified copy of a document is provided under subsection (4), the inspector who has possession of the document must, at such times and places as the inspector thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.	25
[3]	Section 31M	30
	Omit the section. Insert instead:	
	31M Protection from incrimination	
(1)	A person is not excused from making a statement, giving or furnishing information or evidence or producing a document in accordance with a requirement under this Division on the ground that the statement, information,	35

document or evidence may tend to incriminate the person.

- (2) However, any statement, information, document or evidence obtained from a person pursuant to a requirement under this Division is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 31N) if: 5
- (a) the person claims before making the statement or giving, furnishing or producing the information, document or evidence that it might tend to incriminate the person, or 10
- (b) the person's entitlement to make a claim of the kind referred to in paragraph (a) was not drawn to the person's attention before the statement was made or the information, document or evidence was given, furnished or produced. 15
- (3) Subsection (2) does not prevent the admission in evidence in proceedings against a body corporate of any statement, information, document or evidence obtained pursuant to a requirement under this Division from a person as a competent officer of the body corporate. 20

[4] Section 31N Offence: obstruction and compliance

Omit section 31N (e). Insert instead:

- (e) in purported compliance with a requirement under this Division, or in answer to a question of an inspector asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular. 25 30

[5] Section 31U Review of notices

Omit section 31U (4). Insert instead:

- (4) The WorkCover Authority is to review a notice that is the subject of a duly made application for review. The notice is stayed (unless it is a prohibition notice) from 35

when the application for review is received by the WorkCover Authority until the WorkCover Authority gives notice to the applicant of the result of the review. If the notice is a prohibition notice it can be stayed as provided by section 31UA.

5

[6] Section 31UA

Insert after section 31U:

31UA Application to Industrial Magistrate for stay of prohibition notice

- (1) If a person duly applies under section 31U for review of a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate for a stay of the notice. 10
- (2) A stay may be granted for such period as the court considers appropriate but not so as to extend past the time when notice of the result of the review is given to the applicant by the WorkCover Authority. 15
- (3) A stay may be granted on such conditions as the court considers appropriate and may be revoked or amended by the court. 20

2.6 WorkCover Legislation Amendment Act 1995 No 89

[1] Schedule 1 Amendment of Workers Compensation Act 1987

Omit so much of item [6] as inserts section 11A (2) of the *Workers Compensation Act 1987*.

[2] Schedule 1 [43]

25

Omit so much of the item as inserts section 94A (5) and (6) of the *Workers Compensation Act 1987*.

[3] Schedule 1 [49], [50]

Omit the items.

[4] Schedule 3 Amendment of Compensation Court Act 1984

Omit items [1] and [2].

[5] Schedule 3 [29]

Omit so much of the item as inserts clause 8 of Part 4 of Schedule 4 to the *Compensation Court Act 1984*.

5

2.7 WorkCover Administration Act 1989 No 120

Section 19 Payments into and from Fund

Insert after section 19 (2) (b):

- (b1) expenditure incurred by the Department of Industrial Relations in relation to the exercise (whether before or after the commencement of this paragraph) of the functions of conciliation officers under the *Workers Compensation Act 1987* by conciliation officers who are officers of that Department, including the remuneration payable to those officers, 10
- (b2) the remuneration (including allowances) of conciliation officers appointed under section 96 (1A) of the *Workers Compensation Act 1987*, 15

2.8 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83 20

[1] Section 23 Definitions

Insert in alphabetical order:

- relevant journey*, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity. 25
- 30

[2] Section 24 Injuries to which this Part applies

Omit section 24 (1) (b). Insert instead:

- (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.

[3] Sections 28A and 28B

5

Insert after section 28:

28A Compensation for damage to personal effects, vehicles and other things

(1) Compensation is payable under this Part in respect of:

- (a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and 10
15
- (b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and 20
- (c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker. 25

(2) The amount of the compensation payable under this section is such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss. 30

-
- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion. 5
- (4) Compensation is not payable under this section in respect of any loss: 10
- (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or
- (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source. 15
- (6) In this section *personal effects* does not include personal effects referred to in section 28.
- 28B Prohibition on increased premium under motor vehicle insurance policy** 20
- (1) In this section:
- authorised activity damage* means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5). 25
- insurance policy* means policy of insurance in respect of damage to or destruction or loss of a vehicle. 30
- insurer* means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

-
- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage. 5
- Maximum penalty: 5 penalty units.
- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it. 15
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.
- [4] Section 32 Application of Principal Act**
- Omit "section 52" from section 32 (1) (c). 20
 Insert instead "sections 52, 52A and 52B".
- [5] Schedule 1 Transitional and other provisions**
- Omit the heading to the Schedule. Insert instead:
- Schedule 1 Savings and transitional provisions**
- (Section 35) 25
- Part 1 General**
- 1A Savings and transitional regulations**
- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts: 30
- WorkCover Legislation Amendment Act 1996*
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 5
 - (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication. 10

**Part 2 Workers Compensation (Bush Fire,
Emergency and Rescue Services) Act 1987**

[6] Schedule 1, Part 3 15

Insert after clause 2:

**Part 3 WorkCover Legislation Amendment Act
1996**

3 Operation of amendments

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section. 20

2.9 Workers' Compensation (Dust Diseases) Act 1942 No 14

[1] Section 6 Constitution of Fund 25

Insert "and" at the end of each of paragraphs (a) and (b) in section 6 (1) and insert at the end of section 6 (1) (d):

, and

- (e) all amounts that immediately before the commencement of this paragraph stood to the credit of the Dust Diseases Reserve Fund, and 30

WorkCover Legislation Amendment Bill 1996 (No 2)

Amendment of other Acts

Schedule 2

-
- (f) all amounts contributed by insurers under subsection (6) or (7D).

[2] Section 6 (7C)

Omit the subsection. Insert instead:

- (7C) The WorkCover Authority is to pay the contributions paid by insurers under subsections (6) and (7) to the board for payment into the Fund. 5

[3] Section 6 (7D)

Omit "Dust Diseases Reserve".

[4] Section 8 Certificate of medical authority and rates of compensation 10

Omit "sections 51 and 52" from section 8 (3) (b).
Insert instead "sections 51, 52, 52A and 52B".



New South Wales

WorkCover Legislation Amendment Act 1996 No 120

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of other Acts	2

Schedules

1 Amendment of Workers Compensation Act 1987	3
2 Amendment of other Acts	55



New South Wales

WorkCover Legislation Amendment Act 1996 No 120

Act No 120, 1996

An Act to amend the *Workers Compensation Act 1987* to make further provision with respect to maximum workers compensation benefits, journey claims, deductions for previous injuries, weekly payments of compensation, conciliation of disputes, and in other respects; to amend certain other Acts; and for other purposes. [Assented to 3 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *WorkCover Legislation Amendment Act 1996*.

2 Commencement

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

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act set out in Schedule 2 is amended as set out in that Schedule.

Schedule 1 **Amendment of Workers Compensation Act 1987**

(Section 3)

1.1 **Amendments—new conciliation arrangements**

[1] **Section 3 Definitions**

Insert the following definitions in section 3 (1) in alphabetical order:

existing claim has the meaning given by section 87D.

new claim has the meaning given by section 87D.

Principal Conciliator means the Principal Conciliator appointed under section 87F.

[2] **Section 3 (6)**

Insert after section 3 (5):

- (6) Notes included in the text of this Act do not form part of this Act.

[3] **Part 4, Division 1A**

Insert before Division 1 of Part 4:

Division 1A Special conciliation provisions for new claims

87D Definitions

- (1) In this Act:

existing claim means, subject to any regulations under this section that modify this definition:

- (a) any claim for compensation made before the commencement of this Division (as inserted by the *WorkCover Legislation Amendment Act 1996*), and
- (b) any claim for compensation made after that commencement that is a further claim in respect of an injury for which a claim was made before that commencement.

new claim means any claim for compensation that is not an existing claim.

- (2) The regulations can modify the definition of ***existing claim*** in this section and for that purpose can contain provisions of a savings or transitional nature with respect to the application of provisions of this Part to and in respect of claims that as a result of any such regulations become or cease to be existing claims.
- (3) In modifying the definition of ***existing claim***, the regulations can even provide that no claims are existing claims (with the result that all claims will be dealt with as new claims), or alternatively can provide that all claims are existing claims (with the result that no claims will be dealt with as new claims).

87E Conciliation officers for new claims or existing claims

- (1) A person employed or appointed as a conciliation officer may be so employed or appointed as a conciliation officer for new claims (a ***new claims conciliation officer***) or for existing claims (an ***existing claims conciliation officer***). If a person is not employed or appointed as a new claims conciliation officer, the person is taken to have been employed or appointed as an existing claims conciliation officer.
- (2) New claims conciliation officers may be referred to as conciliation officers or as conciliators.

87F Principal Conciliator for new claims

- (1) Of the persons employed as new claims conciliation officers one is to be appointed by the head of the Department of Industrial Relations as the Principal Conciliator. When a person is appointed as the Principal Conciliator, any previous appointment of a person as the Principal Conciliator ceases to have effect.
- (2) The Principal Conciliator has and may exercise in respect of new claims all the functions of the Senior Conciliation Officer, in place of the Senior Conciliation Officer.

- (3) The Principal Conciliator can delegate to any new claims conciliation officer any of the Principal Conciliator's functions under this Part, including any function that the Principal Conciliator has under subsection (2), but cannot delegate this power of delegation.

[4] Section 96 Conciliation officers

Omit "Officers of the Authority" from section 96 (1).

Insert instead "Officers of the Authority or of the Department of Industrial Relations".

[5] Section 96 (4)

Insert after section 96 (3):

- (4) In the month of May in each year, the Minister is to prepare and forward to the WorkCover Authority an estimate of the expenditure to be incurred by the Department of Industrial Relations in relation to the exercise of the functions of conciliation officers under this Act by conciliation officers who are officers of that Department, including the remuneration payable to those officers.

[6] Section 97 Referral of disputes for conciliation

Insert at the end of section 97:

Note. Disputes involving new claims are to be referred to the Principal Conciliator, not the Senior Conciliation Officer.

- (3) The validity of a referral under this section is not affected by the incorrect referral of a dispute to the Principal Conciliator or the incorrect referral of a dispute to the Senior Conciliation Officer, and either can refer a dispute referred to him or her to the other.

[7] Section 98A Power of conciliation officer to require information

Insert after section 98A (1):

- (1A) If a dispute in respect of a new claim for weekly payments of compensation has been referred for conciliation by the worker and the person on whom the claim was made has or claims to have a reasonable excuse for failing to commence the weekly payments (or the balance of weekly payments in dispute) within 21 days after the claim was duly made, the information that a conciliation officer can require that person to furnish includes details of that excuse.

[8] Section 98A (6)

Insert after section 98A (5):

- (6) The regulations may make provision for or with respect to any of the following matters:
 - (a) excepting specified kinds of information or documents from the operation of this section,
 - (b) specifying cases and circumstances in which a conciliation officer is required to exercise the conciliation officer's powers under subsection (1),
 - (c) the circumstances in which information or documents furnished or produced to a conciliation officer under this section may or may not be furnished or produced by the conciliation officer to any other party to the dispute.

[9] Section 98D Certificates as to conciliation of disputes

Insert after section 98D (2):

- (2A) A conciliation officer is to issue a conciliation certificate for a dispute at the request of the Senior Conciliation Officer.

- (2B) The Senior Conciliation Officer may, either on the recommendation of the conciliation officer or on his or her own initiative, refer a conciliation certificate to the Registrar of the Compensation Court to form part of any file of the Court on proceedings commenced, or that may later be commenced, in relation to the dispute concerned.

[10] Section 98D (3)

Re-number paragraph (e) of section 98D (3) as paragraph (f) and omit "in the opinion of the conciliation officer" from that paragraph.

[11] Section 98D (3) (e)

Insert after section 98D (3) (d):

- (e) if conciliation was unsuccessful (wholly or partially) the reasons for that,

[12] Sections 98E, 98F

Insert after section 98D:

98E Time within which disputes must be referred to conciliation

The regulations may make provision for or with respect to limiting the time within which a dispute in respect of a new claim can be referred for conciliation under this Division.

98F Agreements arising from conciliation

- (1) If the conciliation of a dispute under this Division gives rise to an agreement between the parties, the conciliation officer may assist the parties in drafting written terms of agreement or in completing any approved standard form of agreement.

- (2) If the agreement relates to compensation under section 66 or 67, the conciliation officer can refer the agreement to the Senior Conciliation Officer for forwarding on to the Authority to be registered under section 66A. An application for registration of the agreement under section 66A is then taken to have been made by a party to the agreement.
- (3) If the agreement relates to other compensation, it may, with the consent of the parties, be registered by the Authority (in the case of existing claims) or by the head of the Department of Industrial Relations (in the case of new claims).
- (4) The following are examples of the provisions that an agreement arising from conciliation of a dispute can contain:
 - (a) provision for the employer or insurer to continue to pay compensation for a specified minimum period subject to compliance by the worker with specified conditions,
 - (b) provisions to cover matters such as the supply of medical certificates certifying as to incapacity and requirements for participation by the worker in the employer's workplace rehabilitation program, rehabilitation training or other specified activities designed to assist the worker to return to work,
 - (c) provisions designed to avoid or minimise further disputes between the parties, such as provisions requiring the parties to communicate with the conciliation officer concerning any dispute or potential dispute,
 - (d) provision for a review of the agreement at a specified time, either by the parties alone or in consultation with the conciliation officer,
 - (e) provisions designed to deal with any further disputes that might arise, so as to resolve them quickly while keeping costs to a minimum.

[13] Section 100A Proceedings before conciliation officers

Insert "in respect of an existing claim" after "dispute" wherever occurring in section 100A (2) and (3).

[14] Section 100A (2A)

Insert after section 100A (2):

- (2A) A person who is a party to any dispute in respect of a new claim is entitled to be represented by a barrister or solicitor, and by an agent of such a class as may be prescribed by the regulations. The conciliation officer may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.

[15] Section 100A (3C)

Insert after section 100A (3B):

- (3C) A conciliation officer may, subject to any general directions by the Senior Conciliation Officer:
- (a) hold a conciliation conference with all relevant parties in attendance and, if the conciliation officer considers appropriate, with the employer (in the employer's own right, even if the employer is represented by an insurer) and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them, and
 - (b) in a case where the employer concerned is represented by an insurer—nevertheless communicate directly with the employer about the provision of suitable employment for the worker or any other matter connected with the dispute.

[16] Section 100A (7)

Insert after section 100A (6):

- (7) An agreement that arises from the conciliation of a dispute under this Division is not admissible in proceedings before the Compensation Court, except:
 - (a) when the parties to the agreement otherwise agree, or
 - (b) in such circumstances as the regulations may specify.

[17] Section 102 Existing claims for weekly payments—commencement of payments

Insert at the end of section 102 (1):

This section does not apply to new claims.

[18] Section 102A

Insert after section 102:

102A New claims for weekly payments—commencement of payments

- (1) This section applies only to new claims.
- (2) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.
- (3) If the person on whom a claim is made disputes liability to make the weekly payments within 21 days after the claim for compensation is duly made, the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) does not apply.

Note. If liability is disputed the worker can refer the dispute to conciliation. See section 106FB.

-
- (4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (2) and (3) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends:
- (a) 42 days after the claim for compensation is duly made, or
 - (b) when the person ceases to have that reasonable excuse,
- whichever is earlier.
- (5) An employer has such a reasonable excuse if:
- (a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
 - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.
- (6) This section ceases to apply if the claim for compensation is withdrawn.

[19] Section 103 Offences—commencement of weekly payments

Insert “or 102A” after “102” in section 103 (1).

[20] Section 103A Disputes about continuation of weekly payments to be referred to conciliation within 21 days

Insert “This section does not apply if the claim concerned is a new claim.” after “Division 2.” in section 103A (1).

[21] Section 106CA

Insert before section 106D:

106CA Division applies only to existing claims

This Division applies only to court proceedings in respect of an existing claim.

[22] Part 4 Division 3B

Insert after Division 3A of Part 4:

**Division 3B Restrictions on commencing court
proceedings—new claims**

106FA Division applies only to new claims

This Division applies only to court proceedings in respect of a new claim.

**106FB Restrictions on commencing court proceedings about
weekly payments**

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 2 and either:
 - (a) the conciliation officer has issued a certificate of conciliation outcome, or
 - (b) the conciliation officer has given a notification under section 104 (3) in respect of the dispute, or
 - (c) a period of 21 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,whichever happens first.
- (2) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 2 until:
 - (a) the person on whom the claim is made has disputed liability to make the payments, or

- (b) the time within which the person on whom the claim is made is required under section 102A to commence those payments has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute),

whichever happens first.

Note. Section 102A allows up to 42 days for the commencement of weekly payments of compensation.

- (3) A worker cannot commence court proceedings in respect of *related compensation* until subsection (1) allows the commencement of proceedings in respect of the weekly payments of compensation concerned. Related compensation is compensation under Division 3 of Part 3 that relates to the incapacity for work to which the weekly payments of compensation relate.
- (4) This section does not prevent the commencement of court proceedings in any of the following circumstances:
 - (a) if the proceedings concern an application for a determination under section 53,
 - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,
 - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of this Act,
 - (d) any circumstances prescribed by the regulations.

106FC Restrictions on commencing court proceedings for lump sum compensation

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 unless a dispute about that compensation has been referred for conciliation under Division 2 and either:
 - (a) the conciliation officer has issued a certificate of conciliation outcome, or

- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,

whichever happens first.
- (2) A worker cannot refer a dispute about compensation under section 66 for conciliation under Division 2 until:
 - (a) 12 weeks after the claim for the compensation is duly made, or
 - (b) the person on whom the claim is made disputes liability to pay the compensation,

whichever happens first.
- (3) If the person on whom a claim for compensation under section 66 is made has, within 12 weeks after that claim is duly made, duly applied under section 131 for reference of the matter to a medical panel, the worker can commence court proceedings in respect of that compensation 14 days after the panel has given its certificate under that section even if subsection (1) would otherwise prevent commencement of proceedings at that time.
- (4) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss or further loss, or for related compensation, until this section allows the commencement of proceedings in respect of compensation under section 66 for the loss or further loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss, further loss or pain and suffering.
- (5) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66, the proceedings are to be adjourned until:
 - (a) 12 weeks after the claim was amended, or

- (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates,

whichever is later.

- (6) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (5).
- (7) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3).
- (8) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim.
- (9) This section does not prevent the commencement of court proceedings in any circumstances prescribed by the regulations.

106FD Restrictions on commencing court proceedings about hospital, medical and other expenses

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses) or

Division 5 (Compensation for property damage) of Part 3 unless a dispute about that compensation has been referred for conciliation under Division 2 and either:

- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,

whichever happens first.

- (2) A worker cannot refer a dispute about compensation under Division 3 or 5 of Part 3 for conciliation under Division 2 until:

- (a) 28 days after the claim for compensation is duly made, or
- (b) the person on whom the claim is made disputes liability to pay the compensation,

whichever happens first.

- (3) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 and are commenced in compliance with section 106FB or 106FC (whichever is appropriate).
- (4) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.
- (5) This section applies only in respect of new claims for compensation that are of a class prescribed by the regulations as subject to this section. If a new claim for compensation under Division 3 or 5 of Part 3 is not one in respect of which this section applies, section 106F applies in respect of the claim as if it were an existing claim.

106FE Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to:

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106FA, 106FB or 106FC applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

[23] Section 107A

Omit the section. Insert instead:

107A Authority or DIR may intervene in proceedings

- (1) The Authority or the head of the Department of Industrial Relations (*the DIR*) has a right to be heard in any proceedings before the Compensation Court.
- (2) The Authority or the head of the DIR may, for that purpose, be represented by a barrister or solicitor or an officer of the Authority or the DIR or by any other person.
- (3) In any such proceedings the Authority or the head of the DIR may apply for an order for which any party may apply in those proceedings.

[24] Section 119 Limit on recovery of costs unreasonably incurred

Insert after section 119 (2):

- (2A) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 98D certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate.

[25] Schedule 2 Provisions relating to appointed conciliation officers

Omit "Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*." from clause 3.

[26] Schedule 6 Savings, transitional and other provisions, Part 10 Provisions relating to conciliation officers and weekly payments of compensation

Insert after clause 4:

5 New conciliation arrangements—WorkCover Legislation Amendment Act 1996

Amendments made by the *WorkCover Legislation Amendment Act 1996* do not affect the continuity of employment or appointment of conciliation officers employed or appointed as such immediately before the commencement of those amendments.

1.2 Amendments—employment required to be substantial contributing factor

[1] Section 9A

Insert after section 9:

9A No compensation payable unless employment substantial contributing factor to injury

- (1) No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury.
- (2) The following are examples of matters to be taken into account for the purposes of determining whether a worker's employment was a substantial contributing factor to an injury (but this subsection does not limit the kinds of matters that can be taken into account for the purposes of such a determination):
 - (a) the time and place of the injury,
 - (b) the nature of the work performed and the particular tasks of that work,
 - (c) the duration of the employment,
 - (d) the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she has not been at work or had not worked in that employment,
 - (e) the worker's state of health before the injury and the existence of any hereditary risks,
 - (f) the worker's lifestyle and his or her activities outside the workplace.
- (3) A worker's employment is not to be regarded as a substantial contributing factor to a worker's injury merely because of either or both of the following:

- (a) the injury arose out of or in the course of, or arose both out of and in the course of, the worker's employment,
 - (b) the worker's incapacity for work, loss as referred to in Division 4 of Part 3, need for medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service as referred to in Division 3 of Part 3, or the worker's death, resulted from the injury.
- (4) This section does not apply in respect of an injury to which section 10, 11 or 12 applies.

[2] Section 11A No compensation for psychological injury caused by reasonable actions of employer

Omit section 11A (1). Insert instead:

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.

[3] Section 11A (5)

Omit the subsection.

[4] Section 11A (6)

Insert at the end of section 11A (6):

This section does not affect section 9A (No compensation payable unless employment substantial contributing factor to injury).

[5] Section 11A (7)

Omit the subsection. Insert instead:

- (7) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 92) use, for the purpose of describing the worker's condition, accepted medical terminology and not only terminology such as "stress" or "stress condition".

[6] Section 11A (8)

Insert "then (unless the insurer or self-insurer waives that requirement)" after "deficient claim".

[7] Section 11A (8) (a)

Insert "or 102A" after "102".

[8] Section 16 Aggravation etc of diseases—employer liable, date of injury etc

Omit "contributing factor" wherever occurring.
Insert instead "substantial contributing factor".

[9] Section 19 Diseases deemed work related

Omit "contributing factor" from section 19 (1) (b).
Insert instead "substantial contributing factor".

[10] Section 92 Making of claim for compensation

Insert after section 92 (1B):

- (1C) The medical certificate required to accompany a claim for weekly payments of compensation must include a statement of the medical practitioner's opinion (however

expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor.

- (1D) If a claim is deficient because subsection (1C) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement):
- (a) the claim is not considered to have been duly made for the purposes of section 102 or 102A until subsection (1C) is complied with, and
 - (b) court proceedings cannot be commenced in respect of the claim until subsection (1C) is complied with.
- (1E) All claims for compensation under section 66 and 67 in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later.

**[11] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

Insert after clause 8:

**9 Requirement that employment be substantial
contributing factor**

- (1) Section 9A of this Act, as inserted by the *WorkCover Legislation Amendment Act 1996*, does not apply to injuries received before the commencement of that section.

-
- (2) The amendments made to section 11A, 16, 19 and 92 of this Act by Schedule 1.2 to the *WorkCover Legislation Amendment Act 1996* do not apply in respect of injuries received before the commencement of the amendments, except as provided by subclause (3).
 - (3) Section 92 (1C) and (1D) extend to apply to an injury that is a psychological injury within the meaning of section 11A that was received before the commencement of those subsections and after the commencement of section 11A.
 - (4) In a case where section 16 deems an injury to have happened within 12 months after the commencement of section 9A, sections 16 (2) and 68B (3) are, in their application in respect of any period of employment before the commencement of section 9A, to be read as if a reference in those provisions to employment that was a substantial contributing factor were a reference to employment that was a contributing factor (whether or not a substantial contributing factor).

1.3 Amendments—journey claims

[1] Section 10 Journey claims

Omit section 10 (1A). Insert instead:

- (1A) Subsection (1) does not apply if the personal injury is attributable to the serious and wilful misconduct of the worker.

[2] Section 10 (1B)

Omit “to have been caused by the fault of the worker”.
Insert instead “to be attributable to the serious and wilful misconduct of the worker”.

[3] Section 10 (1C)

Omit the subsection.

[4] Section 10 (6)

Omit the definition of *fault*.

**[5] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

Insert after clause 2 (2):

- (3) Section 10 of this Act continues to apply in respect of personal injury received by a worker before the commencement of the amendments made to that section by the *WorkCover Legislation Amendment Act 1996* as if those amendments had not been made.

**1.4 Amendments—reduction in maximum lump sum
compensation amounts**

[1] Section 66 Compensation for permanent injuries

Omit "\$132,300" from section 66 (1).
Insert instead "\$100,000".

[2] Section 66 (2)

Omit "\$160,950". Insert instead "\$121,000".

[3] Section 67 Compensation for pain and suffering

Omit "\$66,200" from section 67 (1).
Insert instead "\$50,000".

**[4] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert after clause 17:

**18 Reduction in lump sum compensation amounts—1996
amendments**

- (1) Despite sections 66 (3) and 67 (6), the compensation payable under section 66 or 67 in respect of any injury received before the commencement of the amendment of

those sections by the *WorkCover Legislation Amendment Act 1996* where no claim for compensation under either section 66 or 67 in respect of the injury was duly made by the worker before that commencement is to be calculated by reference to the requisite percentage of the amounts in force under the relevant section immediately after its amendment by that Act.

- (2) If proceedings are pending before the Compensation Court on a claim for compensation under section 66 or 67, a claim for that compensation is taken not to have been made before the commencement of the amendments to which this clause applies if:
 - (a) no claim for that compensation was duly made before the commencement of those amendments, or
 - (b) the worker did not, before the commencement of those amendments, give the employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation claimed.
- (3) If this clause results, in a particular case, in a greater amount of compensation being payable in that case than would have been the case in the absence of this clause, this clause does not apply in that particular case.

1.5 Amendments—discontinuation of weekly payments after 2 years

[1] Section 38A Determination of whether worker is seeking suitable employment

Insert “and section 52A (Discontinuation of weekly payments after 2 years)” after “section 38” in section 38A (1).

[2] Section 38A (4)

Insert “or to the discontinuation of weekly payments under section 52A” after “section 38”.

[3] Section 40A Assessment of incapacitated worker's ability to earn

Insert “, and about the possible effects of section 52A on the worker” after “those entitlements” in section 40A (2).

[4] Sections 52A and 52B

Insert after section 52:

52A Discontinuation of weekly payments after 2 years

- (1) Weekly payments of compensation in respect of incapacity for work are not payable for any period beyond the first 104 weeks of incapacity for work (whether total or partial, or a combination of both) in respect of which the worker has received or is entitled to receive weekly payments of compensation but only if one or more of the following paragraphs applies to the worker:
 - (a) the worker is partially incapacitated for work, is not suitably employed (within the meaning of section 43A), has not yet exhausted his or her entitlement to compensation under section 38 and is not seeking suitable employment (as determined in accordance with section 38A),
 - (b) the worker has received weekly payments (including payments during rehabilitation training) under section 38 for the maximum total period under that section and has subsequently unreasonably refused an offer of suitable employment for which the worker received that training,

-
- (c) the worker has received weekly payments under section 38 for the maximum total period under that section but has failed to obtain suitable employment solely because of the state of the labour market (rather than because of the effects of the worker's injury).
- (2) Weekly payments of compensation do not cease to be payable pursuant to this section until the person liable to make the payments has given the worker at least 12 weeks notice (a *payment discontinuation notice*) of the person's intention to discontinue the payments under this section (even if this would result in the worker receiving the payments for more than 104 weeks). The regulations may provide that the requirements of this subsection do not apply in specified cases or classes of cases.
- (3) The following requirements apply to a payment discontinuation notice:
- (a) the notice must contain a statement of the grounds on which the notice is given (by reference to which of paragraphs (a), (b) and (c) of subsection (1) applies to the worker) and must inform the worker of action by the worker that is necessary to prevent the discontinuation of weekly payments,
 - (b) the notice is to be given to the worker personally or by post,
 - (c) the notice must contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers.
- (4) The fact that the worker becomes temporarily totally incapacitated for work after service of the payment discontinuation notice does not prevent the discontinuation of weekly payments under this section.
-

- (5) The payment discontinuation notice can be given up to 12 weeks before the end of the 104 week period for which the worker has received or is entitled to receive weekly payments of compensation but cannot be given earlier than that.
- (6) Once a payment discontinuation notice is given, and so long as the worker has provided the worker's employer or the employer's insurer with a certificate by a medical practitioner specifying the expected duration of the worker's incapacity, the person paying the compensation must not discontinue payment, or reduce the amount, of the compensation during the period of incapacity so specified until the worker has received another 12 weeks of payments. This subsection does not apply to a reduction in weekly compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable (whether under section 38 or otherwise).
- (7) A payment discontinuation notice can be withdrawn at any time by notice given in writing to the worker by the person who gave the notice, and once withdrawn is taken never to have been given (for the purposes of the further operation of this section in relation to the cessation of weekly payments of compensation). This subsection does not prevent the giving of a further payment discontinuation notice.
- (8) In determining the period for which a worker has received or is entitled to receive weekly payments of compensation, separate periods during which the worker received or is entitled to receive those payments are to be aggregated.
- (9) The giving of a payment discontinuation notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

52B Proceedings in Compensation Court on dispute about discontinuation of weekly payments after 2 years

- (1) The Compensation Court may, on the application of the worker made within 12 weeks after the payment discontinuation notice under section 52A is given to the worker, determine any dispute about the operation of that section. The regulations may make provision for modifying the operation of this subsection in its application to cases in which a payment discontinuation notice is not required to be given under section 52A.
- (2) The fact that proceedings are pending in the Compensation Court on an application under subsection (1) does not prevent the discontinuation of weekly payments of compensation in accordance with section 52A, subject to any order of the Compensation Court under this section.
- (3) When proceedings on a dispute are pending under subsection (1) before the Compensation Court, the worker may apply to the court for an interim award of weekly compensation pending determination of the dispute by the court.
- (4) The Compensation Court may make such an interim award only if satisfied that the worker is subject to hardship and there is likely to be an unusually long delay that is beyond the control of the worker (and the worker's representatives) until the hearing of the matter.
- (5) Any such interim award is to be made subject to the following conditions:
 - (a) the worker must supply to the worker's employer or another specified person from time to time medical certificates relating to the incapacity for work to which the award relates,
 - (b) if the worker is partially incapacitated for work and is not suitably employed (within the meaning of section 43A) and has not yet exhausted the worker's entitlement to compensation under section 38, the worker must take steps to obtain

suitable employment for the purposes of section 38 (as determined in accordance with section 38A).

- (6) Subject to any further order of the Compensation Court, interim payments of compensation under this section may be suspended while the worker is in breach of any conditions of the interim award or is guilty of unreasonable delay in taking some step in the proceedings on the dispute.
- (7) The Compensation Court can make a determination under this section whether or not at the time in respect of which the determination is made the worker is actually entitled to receive any weekly payment for incapacity or would be so entitled but for the operation of section 52A.
- (8) If the Compensation Court subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Court:
 - (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and
 - (b) orders the worker or other person to refund those payments or a specified part of those payments.
- (9) This section does not affect the recovery of weekly payments under section 58.

**[5] Schedule 6 Savings, transitional and other provisions, Part 4
Provisions relating to weekly payments of compensation**

Insert after clause 13:

14 Discontinuation of weekly payments after 2 years

- (1) Section 52A (as inserted by the *WorkCover Legislation Amendment Act 1996*) applies only to compensation payable in respect of an injury received after the commencement of that section, except as provided by this clause.

(2) Section 52A extends to the compensation payable in respect of an injury received before that commencement (but after the commencement of this Act), subject to the following:

- (a) A payment discontinuation notice must not be given until the person liable to make the weekly payments has given the worker a notice (a ***preliminary notice***) informing the worker about the existence and effect of section 52A and alerting the worker to the possible application of that section to the worker.
- (b) The earliest that a preliminary notice can be given to the worker is when the worker would still have to receive at least 52 weeks of weekly payments of compensation in order to bring the total number of weeks of weekly payments received by the worker (both before and after that commencement) to 104 (even if this would result in the worker receiving the payments for more than 104 weeks).
- (c) The preliminary notice is to contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self insurers.
- (d) The earliest that a payment discontinuation notice under section 52A (3) can be given to a worker is:
 - (i) after a period in respect of which the worker has received or is entitled to receive at least 40 weeks of weekly payments since the preliminary notice was given, and
 - (ii) at least 12 weeks before the end of the period of 104 weeks referred to in paragraph (b),

even if this would result in the worker receiving the payments for more than 104 weeks.

- (e) For the purposes of the determination of the period of 104 weeks referred to in paragraphs (b) and (d), a worker is presumed to have received no more than 52 weeks of weekly payments before that commencement, with the result that if a worker received more than 52 weeks of weekly payments before that commencement the number of weekly payments in excess of 52 is to be disregarded.
- (f) In the case of any period of incapacity for work to which clause 5A (2) or 5B (4) of Part 4 of Schedule 6 applies, section 52A (2) (a) is to apply as if it read as follows:
 - (a) the worker is partially incapacitated for work, is not suitably employed, has not yet exhausted his or her entitlement to compensation under section 38 and either:
 - (i) the worker's employer has not failed to provide suitable employment, or
 - (ii) the worker's employer has failed to provide suitable employment but the worker is not seeking suitable employment or receiving rehabilitation training,as determined in accordance with section 38 as applicable to the case under clause 5A or 5B of Part 4 of Schedule 6.
- (3) Section 52A does not apply in any of the following cases:
 - (a) a case where the worker is receiving or entitled to receive weekly payments of compensation under a court award made before the commencement of that section,
 - (b) a case where court proceedings in which the worker is claiming weekly payments of compensation for which the employer or insurer has denied liability (including proceedings on an application for a determination under section 51 where there has been such a denial) are pending as at the commencement of that section,

-
- (c) a case where court proceedings on an application for a determination under section 51 are pending as at the commencement of section 52A and the employer or insurer has not denied liability to make weekly payments of compensation, but only if approval under section 51 (1) (c) has been given before that commencement.
 - (4) The giving of a preliminary notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.
 - (5) The regulations may provide that this clause or specified provisions of this clause do not apply in specified cases or classes of cases.

1.6 Amendments—deduction for previous injuries and pre-existing conditions and abnormalities

[1] Section 66A Registration of agreements for compensation

Omit “section 71” from section 66A (7).

Insert instead “this Part”.

[2] Section 68 Proportionate loss of use

Insert after section 68 (3):

- (4) This section does not apply to a loss for which the Table to this Division provides a range of percentages.

[3] Sections 68A and 68B

Omit section 68A. Insert instead:

68A Deduction for previous injury or pre-existing condition or abnormality

- (1) In determining the compensation payable under this Division for a loss, there is to be a deduction for any proportion of the loss that is due to any previous injury

(whether or not it is an injury for which compensation has been paid or is payable under this Division) or that is due to any pre-existing condition or abnormality.

- (2) The proportion of a loss that is required to be deducted because of subsection (1) is the ***deductible proportion*** for that loss.
- (3) If another loss (the ***secondary loss***) was suffered by the worker as a consequence of a loss (the ***primary loss***) for which there is a deductible proportion under subsection (1) and both losses resulted from the same injury, then in determining the compensation payable under this Division for the secondary loss there is to be a deduction of the proportion equal to the deductible proportion for the primary loss.
- (4) Subsection (3) does not limit the application of subsection (1) in relation to the secondary loss, with the result that there can be a deductible proportion for the secondary loss in its own right under subsection (1) (as well as under subsection (3) for the loss as a secondary loss).
- (5) This section is not limited to applying in respect of a loss of a proportion of a thing mentioned in the Table to this Division and applies even if the loss consists of the loss of all of such a thing.
- (6) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding litigation) that the deductible proportion for the loss (or the relevant part of it) is 10% of the loss, unless this assumption is at odds with the available evidence.

Note. If subsection (6) applies in a particular case to require it to be assumed that the deductible proportion is 10% and the loss in that case is (for example) 30% of the loss of the use of the right arm, the deductible proportion for the loss is 3% (that is, 10% of 30%).

-
- (7) The reference in subsection (6) to medical evidence is, in the context of court proceedings, a reference to medical evidence properly admitted in the proceedings and accepted or preferred by the court.
 - (8) Section 70 applies for the purpose of determining the extent (if any) that a worker's loss of hearing is due to presbycusis.

68B Deductions under section 68A—operation of sections 15, 16, 17 and 22

- (1) When determining the compensation payable for a loss for the purposes of the apportionment of liability under section 22, there is to be no deduction under section 68A for any proportion of the loss that is due to an injury in respect of which liability is to be apportioned (but without affecting any deduction under that section for any proportion of the loss that is due to any other injury or that is due to any pre-existing condition or abnormality).
- (2) When determining the compensation payable in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality).
- (3) When determining the compensation payable in a case in which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment that was a

substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration or that is due to any pre-existing condition or abnormality).

- (4) When determining the compensation payable in a case in which section 17 applies (loss of hearing) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality).

[4] Section 71 Further loss of function—occupational diseases

Omit the section.

[5] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities)

Insert at the end of the Part:

19 Deduction for previous injuries and pre-existing conditions and abnormalities

- (1) The amendments made by the *WorkCover Legislation Amendment Act 1996* that amended sections 68 and 68A and repealed section 71 are taken to have had effect from the commencement of this Act, but not so as to affect:
- (a) any award of compensation made before the date of commencement of the amendments, or

- (b) any compensation that a worker has received or agreed to receive before that date, or
 - (c) any award of, or compromise or settlement of a claim for, damages made before that date, or
 - (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before that date.
- (2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68A applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3.

1.7 Amendments—evidentiary value of medical panel reports and certificates

[1] Section 119 Limit on recovery of costs unreasonably incurred

Insert at the end of section 119 (2) (c):

, or

- (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by section 136 (1A)) and the court is of the opinion that the application was frivolous or vexatious.

[2] Section 131 Referral of medical disputes to referee or panel on application of worker or employer

Omit section 131 (5E).

[3] Section 136 Admissibility and evidentiary value of certificates and reports of medical referees and panels

Insert after section 136 (1):

- (1A) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report.
- (1B) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court.

[4] Schedule 6 Savings, transitional and other provisions, Part 12 Provisions relating to medical examinations and disputes

Insert after clause 7:

8 Evidentiary value of certificates and reports of medical panels

The amendments made to sections 119 and 136 of this Act by the *WorkCover Legislation Amendment Act 1996* extend to a certificate or report given after the commencement of those subsections in respect of an injury received before that commencement, but those amendments do not apply in respect of court proceedings pending or determined as at their commencement.

1.8 Amendments—marketing of legal and agency services

[1] Section 148B Definitions

Re-number paragraph (b) of the definition of *protected claim* as paragraph (c) and insert before that paragraph:

- (b) a claim for the cost of provision of a hearing aid, and

[2] Section 148B (1A)

Insert after section 148B (1):

- (1A) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 148C does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct.

[3] Section 148HA

Insert after section 148H:

148HA Power to restrict or ban recovery of costs by solicitors

- (1) The Authority can by notification given to insurers and self-insurers direct that a solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.
- (2) Such a notification cannot be given unless the Authority is satisfied that the solicitor or a member of the firm of solicitors or a voting shareholder of the solicitor corporation is a director of or has a financial interest in an agent and:
- (a) the agent has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5), or
- (b) a director of the agent or other person concerned in the management of the agent has persistently engaged in any such conduct.
- (3) Before the Authority gives such a notification it must give the solicitor, solicitor corporation or firm of solicitors a reasonable opportunity to make written submissions to the Authority on the matter.

- (4) The effect of a notification under this section is that the solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force.
- (5) A solicitor, solicitor corporation or firm of solicitors aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders.
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the solicitor, solicitor corporation or firm of solicitors concerned.
- (7) For the purposes of this section, a *financial interest* in an agent is a share in the capital of the business conducted by the agent or any entitlement to receive any income derived from the business or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise.

[4] Section 148J Past conduct included in assessing persistent conduct

Omit "section 148H and 148I".

Insert instead "sections 148H, 148HA and 148I".

[5] Section 148J (2)

Insert at the end of section 148J (2):

For the purposes of section 148HA, at least one instance of the conduct must have occurred after the commencement of that section.

[6] Section 148L

Insert after section 148K:

148L Regulation of advertising

- (1) The regulations may make provision for or with respect to regulating (including prohibiting) conduct by any person (including advertising) that relates to the marketing of services to be provided by a lawyer or agent in connection with claims for compensation under this Act.
- (2) A regulation may not be made under this section except with the concurrence of the Minister administering the *Legal Profession Act 1987*.
- (3) Any such regulation can impose a penalty not exceeding 200 penalty units for any contravention of the regulations.

[7] Schedule 6 Savings, transitional and other provisions, Part 9 Provisions relating to notice of injury and claims for compensation

Insert at the end of clause 6:

- (2) The amendment made by the *WorkCover Legislation Amendment Act 1996* to insert section 148B (1A) is made for the purpose of the removal of doubt and accordingly is taken to have had effect from the commencement of that section as inserted by the *WorkCover Legislation Amendment Act 1995*.

1.9 Amendments—transfer of WorkCover Authority functions to Public Trustee

[1] Sections 29 and 30

Omit “the Authority” and “The Authority” wherever occurring. Insert instead “the Public Trustee” and “The Public Trustee” respectively.

[2] Section 31 Payment in respect of dependent children

Omit "to the Authority".

Insert instead "to the Public Trustee in trust".

[3] Section 31

Omit "by the Authority".

Insert instead "by the Public Trustee".

[4] Section 83 Manner of payment of compensation

Insert "or the Public Trustee" after "the Authority" in section 83 (7).

[5] Section 85 Payments to Public Trustee for benefit of beneficiary

Omit "to the Authority" where firstly occurring.

Insert instead "to the Public Trustee in trust".

[6] Section 85

Omit "the Authority" and "The Authority" wherever occurring (except where firstly occurring).

Insert instead "the Public Trustee" and "The Public Trustee" respectively.

[7] Section 86

Omit the section. Insert instead:

86 Public Trustee's powers of investment

- (1) All amounts held by the Public Trustee under this Act are to form part of the common fund under section 36A of the *Public Trustee Act 1913* and are available for investment as provided by that Act.

-
- (2) A power conferred by this Division on the Public Trustee to invest money for the benefit of a person includes a power to invest the money in any manner that the Public Trustee is authorised under the *Public Trustee Act 1913* to invest money held in trust by the Public Trustee.

[8] Section 87 Unclaimed money

Omit "the Authority" wherever occurring.
Insert instead "the Public Trustee".

**[9] Schedule 6 Savings, transitional and other provisions, Part 19
Miscellaneous provisions**

Insert after clause 5:

6 Transfer of functions from Authority to Public Trustee

- (1) In this clause:
the Public Trustee amendments means the amendments made by Schedule 1.9 to the *WorkCover Legislation Amendment Act 1996*.
- (2) An application made under section 29 or 30 of this Act to or by the Authority before the commencement of the Public Trustee amendments is to continue and be dealt with as if those amendments had not been made.
- (3) A decision of the Authority under section 29 is, after the commencement of the Public Trustee amendments, taken to be a decision of the Public Trustee.
- (4) All money and investments belonging to the common fund, Income Suspense Account or Investment Guarantee Account referred to in section 86 of this Act are to be transferred from the Authority to the Public Trustee, to form part of the common fund under section 36A of the *Public Trustee Act 1913*.

- (5) Compensation paid to the Authority under section 85 of this Act is after the commencement of the Public Trustee amendments taken to have been paid to the Public Trustee under that section. Anything done by the Authority under sections 85–87 is after the commencement of the Public Trustee amendments taken to have been done by the Public Trustee.
- (6) The Public Trustee amendments do not affect any liability of the Authority that arose before the commencement of those amendments or that arises after that commencement in respect of any act or omission by the Authority before that commencement. Any such liability remains a liability of the Authority and does not (as a result of those amendments) become a liability of the Public Trustee.

1.10 Amendment—rules and regulations with respect to medical evidence

Section 137 Rules of Court and regulations with respect to medical evidence

Insert “(including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report)” after “panels” in section 137 (b).

1.11 Amendments—making a claim for compensation

[1] Section 92 Making of claim for compensation

Omit section 92 (4B). Insert instead:

- (4B) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority.

[2] Section 92 (6)

Insert after section 92 (5):

- (6) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or occupational rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliation officer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.

1.12 Amendment—deemed employment of participants in workplace based training programs

Schedule 1 Deemed employment of workers

Insert after clause 17A:

18 Participants in training programs

- (1) The regulations may:
 - (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and
 - (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program.
- (2) A person who is a participant in a declared training program is for the purposes of this Act taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the

person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.

- (3) A payment that is declared by the regulations to be wages in respect of a participant in a declared training program is taken for the purposes of this Act to be the participant's wages in the employment by the person who provides the workplace based training.
- (4) Except to the extent that the regulations may otherwise provide, this clause does not apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause.

1.13 Amendment—penalty increase (requirement to keep register of injuries)

Section 90 Register of injuries

Omit "20 penalty units" from section 90 (5).
Insert instead "50 penalty units".

1.14 Amendments—misleading conduct by insurers and brokers

[1] Section 156A

Insert after section 156:

156A Misleading conduct by insurers and brokers with respect to business insurance

- (1) In this section:

broker means a person who is an insurance intermediary within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth.

insurer means a person who carries on insurance business as defined in the *Insurance Act 1973* of the Commonwealth.

- (2) An insurer or broker must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause an employer to believe that the insurance is comprehensive for business needs, unless:
 - (a) the insurance includes the insurance required by this Act, or
 - (b) the representation includes a clear statement to the effect that the insurance does not include workers compensation insurance and that workers compensation insurance is compulsory for employers.
- (3) An insurer or broker who contravenes this section is guilty of an offence.
Maximum penalty: 200 penalty units.
- (4) In any action under section 144, 145, 145A or 156 in respect of a failure by an employer to obtain or maintain in force a policy of insurance, the court hearing the action may order that a specified insurer or broker be joined as a party in the proceedings if the court thinks that the insurer or broker may be culpable in the matter.
- (5) An insurer or broker is culpable in a matter if it appears that the insurer or broker has engaged in conduct that constitutes a contravention of this section (whether or not the insurer or broker has been prosecuted for or convicted of an offence in respect of the contravention) and that conduct caused or contributed significantly to the failure by the employer to obtain or maintain the insurance concerned.
- (6) In any proceedings in which an insurer or broker is joined as a party under this section the court hearing the proceedings may, if satisfied that the insurer or broker is culpable in the matter, order that the insurer or broker is

to be jointly and severally liable with any other party in respect of any amount ordered to be paid by that other party in the proceedings or is to be separately liable, in place of that other party, as to the whole or a specified part of any amount that the other party might be ordered to pay in the proceedings.

**[2] Schedule 6 Savings, transitional and other provisions, Part 15
Provisions relating to insurers**

Insert after clause 24:

25 Conduct of insurers and brokers—1996 amendments

Section 156A (as inserted by the *WorkCover Legislation Amendment Act 1996*) does not apply in respect of conduct that took place before the commencement of the section.

**1.15 Amendments—compliance with provisions that restrict
commencement of proceedings**

**[1] Section 66B No proceedings to enter up award on agreement
for compensation**

Insert after section 66B (2):

- (3) The rules of the Compensation Court and the regulations may make provision for or with respect to:
 - (a) requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that the proceedings are not prevented by this section from being entertained by the Court, and

- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

[2] Section 106G

Insert after section 106F:

106G Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to:

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106D, 106E or 106F applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

1.16 Amendment—rate of interest on common law damages

Section 151M Payment of interest

Omit section 151M (6). Insert instead:

(6) Rate of interest

The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the *Supreme Court Act 1970* for the period concerned.

1.17 Amendments—special provisions for coal miners

[1] Schedule 6 Savings, transitional and other provisions, Part 4 Provisions relating to weekly payments of compensation

Omit paragraph (b) from clause 4A (1). Insert instead:

- (b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act.

[2] Schedule 6, Part 18 Special provision relating to coal miners

Insert after clause 1 (2):

- (3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:
 - (a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and
 - (b) occurs after the commencement of this subclause (as inserted by the *WorkCover Legislation Amendment Act 1996*), and
 - (c) occurs more than 78 weeks after the date of the injury concerned, and
 - (d) occurs during the first 104 weeks of incapacity.
- (4) For the purposes of subclause (3), the first 104 weeks of incapacity is the period of incapacity for work (whether total or partial, or both) of 104 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods.

1.18 Amendments—hearing loss claims

[1] Section 69A No compensation for less than 6% hearing loss

Omit section 69A (2).

[2] Section 69A (3)

Omit “or further loss” wherever occurring.

[3] Section 69A (3)

Omit “or that further loss reaches 5%”.

[4] Section 69A (4) (c) and (d)

Omit the paragraphs. Insert instead:

- (c) The worker suffers a further hearing loss of 5%.
The worker is entitled in the usual way to compensation for the 5% further loss because the 6% threshold has already been passed (the total loss is now 13%).

[5] Section 69B Employer’s responsibility to pay for hearing loss tests

Omit “or further loss” wherever occurring in section 69B (1).

[6] Section 69B (1) (c)

Omit “(being hearing loss for which the worker has not received compensation under section 66)”.

[7] Section 69B (1) (d)

Omit the paragraph.

**[8] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert at the end of clause 9:

- (4) The amendments made to sections 69A and 69B by the
WorkCover Legislation Amendment Act 1996 are taken
to have had effect on and from the commencement of
those sections.

**1.19 Amendments—clarifications and miscellaneous
amendments**

**[1] Section 94A Insurers to give notice and reasons when liability
disputed**

Insert at the end of section 94A (3):

The regulations may require an insurer to give a copy of
a notice under this section to the claimant's employer.

**[2] Section 117 Regulations fixing maximum costs recoverable by
legal practitioners**

Omit "medical opinions" from section 117 (1) (b).
Insert instead "medical reports (including certificates)".

[3] Section 117 (3)

Omit "any report".
Insert instead "any medical report (including any certificate)".

**[4] Section 118 Regulations fixing maximum fees recoverable by
medical practitioners for medico-legal services**

Omit "medical opinion or certificate" from section 118 (1) (a).
Insert instead "medical report (including any certificate)".

[5] Section 118 (3)

Insert after section 118 (2):

- (3) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.

[6] Section 122 Solicitor/client costs in compensation proceedings

Insert after section 122 (6):

- (7) A reference in this section to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

[7] Section 152A Return-to-work plans for injured workers

Insert "or any such plan" after "section" in section 152A (3) (b).

[8] Section 168 Insurance premiums orders

Insert after section 168 (3A):

- (3B) The Insurance Premiums Order (1996–1997) (published in Gazette No 76 of 26 June 1996) is amended by omitting Note 15 from Table A (Basic Tariff Rates Notes), with effect from immediately before 4 pm on 30 June 1996. An insurance premiums order applying in any period before 30 June 1998 must not contain provision to the same or similar effect as that Note.

[9] Section 270 Worker's right to information

Omit "refuse" from section 270 (2) (a). Insert instead "fail".

[10] Schedule 6 Savings, transitional and other provisions, Part 11 Provisions relating to proceedings before Commissioners and the Compensation Court

Omit "the insertion" from clause 1.
Insert instead "the commencement".

[11] Schedule 6, Part 11

Insert after clause 2:

3 Restrictions on commencement of proceedings

The provisions of Division 3A of Part 4 (sections 106D–106F) extend to apply in respect of an injury received before the commencement of that Division, but do not apply in respect of court proceedings pending or determined as at that commencement.

[12] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of the list of Acts in clause 1 (1):

WorkCover Legislation Amendment Act 1996

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Compensation Court Act 1984 No 89

Section 14A Medical referees

Insert at the end of section 14A (2):

The Chief Judge is to consult concerning proposed appointments of medical referees with such employer and employee organisations as the Minister may nominate from time to time or, in the absence of any such nomination, as the Chief Judge considers appropriate.

2.2 Construction Safety Act 1912 No 38

[1] Section 17A Riggers, divers, powdermen and certain other tradespersons

Insert after section 17A (2) (c):

- (d) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person if the Authority is satisfied that the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence). In this paragraph, **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

[2] Section 17A (5AA)

Omit "may suspend". Insert instead "may, at any time, suspend".

[3] Section 17A (5AA)

Insert at the end of section 17A (5AA):

If the Authority is satisfied that the holder of a powderman's certificate of competency who has been served with a notice under subsection (5) has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence) the Authority may, at any time, suspend the certificate of competency pending the determination of the matter by the Authority under this subsection.

In this subsection, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

2.3 Dangerous Goods Act 1975 No 68

[1] Section 27A Commissioner of Police to report on explosives licences and permits

Insert after section 27A (2) (d):

- (d1) whether the applicant has a history of violence or threats of violence, with *violence* including behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*,
- (d2) whether there is an apprehended violence order under Part 15A of the *Crimes Act 1900* in force with respect to the applicant,

[2] Section 28A

Insert after section 28:

28A Special provision for suspension or cancellation of explosives licences and permits

- (1) This section applies to licences and permits to which section 27A applies.

-
- (2) If the Authority thinks that the holder of a licence or permit cannot be trusted to have access to explosives because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence), the Authority may, at any time, by notice in writing served on the holder require the holder to appear before the Authority at a time and place specified in the notice to show cause why the licence or permit should not be cancelled. The Authority may also, at any time, suspend the licence or permit pending determination of the matter under subsection (3).
 - (3) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of the licence or permit, the Authority may cancel the licence or permit.
 - (4) If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a licence or permit to which this section applies (whether or not the person has been served with a notice under subsection (2)) the Authority may, at any time, suspend the licence or permit for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force.
 - (5) This section does not limit any powers of the Authority under section 28 with respect to a licence or permit to which this section applies.
 - (6) In this section **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

2.4 Industrial Relations Act 1996 No 17

Section 197A

Insert after section 197:

197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation

- (1) This section applies to the decision of a member of the Commission or of a Local Court constituted by an Industrial or other Magistrate to acquit a person of an offence against the occupational health and safety legislation.
- (2) This section applies to such a decision only if proceedings for the offence were instituted by an inspector appointed under that legislation or with the consent of the Minister or other officer authorised by that legislation to give such a consent.
- (3) An appeal lies to the Full Bench of the Commission in Court Session against a decision to which this section applies. The appeal is not limited to a question of law.
- (4) The appeal may be made by the Attorney General, the Minister, the Director of Public Prosecutions or the prosecutor in the proceedings in which the decision appealed against was made.
- (5) An appeal may be made within 21 days after the date of the decision appealed against or within such further time (not exceeding 3 months after that date) as the Full Bench or the Commission constituted by a Presidential Member allows. Further time may be allowed, either before or after the end of that 21-day period.
- (6) Section 191 applies to an appeal under this section.
- (7) On an appeal under this section, the Full Bench may:
 - (a) dismiss the appeal, or
 - (b) set aside the decision appealed against and make a decision in the matter in accordance with law (including the conviction and sentence of the defendant for the offence charged).
- (8) If the Full Bench on appeal convicts the defendant of the offence, the maximum penalty that the Full Bench may impose for the offence is the maximum penalty that the court that acquitted the defendant could have imposed for the offence.

-
- (9) This section has effect despite anything to the contrary in section 196 or 197.
- (10) In this section:
- occupational health and safety legislation* means the *Occupational Health and Safety Act 1983*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act.
- (11) This section does not apply to a decision made before the commencement of this section.

2.5 Occupational Health and Safety Act 1983 No 20

[1] Section 21B Plant or premises involved in serious occurrence

Omit "dangerous occurrence" wherever occurring.
Insert instead "serious occurrence".

[2] Section 21B (5)–(5B)

Omit section 21B (5). Insert instead:

- (5) The requirements of subsections (1) and (2) in relation to any particular serious occurrence apply only for the period of 36 hours following notification of the occurrence in accordance with this section, subject to any extension of that period under subsection (6).
- (5A) When a serious occurrence occurs at a place of work, the occupier of the place, or such other person as may be prescribed by the regulations, must give notice of the occurrence to the Authority within such time and in such manner as may be prescribed by the regulations.

Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

- (5B) The regulations may provide for the acknowledgment by the Authority of the receipt by it of a notice under this section in respect of a serious occurrence and may provide that such a notice is, for the purposes of subsection (5), taken not to have been given until receipt of it is so acknowledged.

[3] Section 21B (6)

Omit "requirements of this section".

Insert instead "requirements of subsections (1) and (2)".

[4] Section 31KA

Insert after section 31K:

31KA Power of inspectors to obtain information, documents and evidence

- (1) An inspector may, by notice in writing served on a person who is, on reasonable grounds, believed by the inspector to be capable of giving information, producing documents or giving evidence in relation to a possible contravention of the relevant legislation require the person to do any one or more of the following things:
- (a) to give an inspector, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any such information of which the person has knowledge,
 - (b) to produce to an inspector, in accordance with the notice, any such documents,
 - (c) to appear before an inspector at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.
- (2) A notice under this section must contain a warning that a failure to comply with the notice is an offence.

-
- (3) An inspector may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.
 - (4) An inspector may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an inspector to be a true copy.
 - (5) A certified copy provided under subsection (4) is receivable in all courts as if it were the original.
 - (6) Until a certified copy of a document is provided under subsection (4), the inspector who has possession of the document must, at such times and places as the inspector thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.

[5] Section 31M

Omit the section. Insert instead:

31M Protection from incrimination

- (1) A person is not excused from making a statement, giving or furnishing information or evidence or producing a document in accordance with a requirement under this Division on the ground that the statement, information, document or evidence may tend to incriminate the person.
- (2) However, any statement, information, document or evidence obtained from a person pursuant to a requirement under this Division is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 31N) if:
 - (a) the person claims before making the statement or giving, furnishing or producing the information, document or evidence that it might tend to incriminate the person, or

- (b) the person's entitlement to make a claim of the kind referred to in paragraph (a) was not drawn to the person's attention before the statement was made or the information, document or evidence was given, furnished or produced.
- (3) Subsection (2) does not prevent the admission in evidence in proceedings against a body corporate of any statement, information, document or evidence obtained pursuant to a requirement under this Division from a person as a competent officer of the body corporate.

[6] Section 31N Offence: obstruction and compliance

Omit section 31N (e). Insert instead:

- (e) in purported compliance with a requirement under this Division, or in answer to a question of an inspector asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular.

[7] Section 31U Review of notices

Omit section 31U (4). Insert instead:

- (4) The WorkCover Authority is to review a notice that is the subject of a duly made application for review. The notice is stayed (unless it is a prohibition notice) from when the application for review is received by the WorkCover Authority until the WorkCover Authority gives notice to the applicant of the result of the review. If the notice is a prohibition notice it can be stayed as provided by section 31UA.

[8] Section 31UA

Insert after section 31U:

31UA Application to Industrial Magistrate for stay of prohibition notice

- (1) If a person duly applies under section 31U for review of a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate for a stay of the notice.

-
- (2) A stay may be granted for such period as the court considers appropriate but not so as to extend past the time when notice of the result of the review is given to the applicant by the WorkCover Authority.
 - (3) A stay may be granted on such conditions as the court considers appropriate and may be revoked or amended by the court.

2.6 WorkCover Legislation Amendment Act 1995 No 89

[1] Schedule 1 Amendment of Workers Compensation Act 1987

Omit so much of item [6] as inserts section 11A (2) of the *Workers Compensation Act 1987*.

[2] Schedule 1 [43]

Omit so much of the item as inserts section 94A (5) and (6) of the *Workers Compensation Act 1987*.

[3] Schedule 1 [49], [50]

Omit the items.

[4] Schedule 3 Amendment of Compensation Court Act 1984

Omit items [1] and [2].

[5] Schedule 3 [29]

Omit so much of the item as inserts clause 8 of Part 4 of Schedule 4 to the *Compensation Court Act 1984*.

2.7 WorkCover Administration Act 1989 No 120

Section 19 Payments into and from Fund

Insert after section 19 (2) (b):

- (b1) expenditure incurred by the Department of Industrial Relations in relation to the exercise (whether before or after the commencement of this paragraph) of the functions of conciliation officers under the *Workers Compensation Act 1987* by conciliation officers who are officers of that Department, including the remuneration payable to those officers,
- (b2) the remuneration (including allowances) of conciliation officers appointed under section 96 (1A) of the *Workers Compensation Act 1987*,

2.8 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83

[1] Section 23 Definitions

Insert in alphabetical order:

relevant journey, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity.

[2] Section 24 Injuries to which this Part applies

Omit section 24 (1) (b). Insert instead:

- (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.

[3] Sections 28A and 28B

Insert after section 28:

28A Compensation for damage to personal effects, vehicles and other things

- (1) Compensation is payable under this Part in respect of:
 - (a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and
 - (b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and
 - (c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker.
- (2) The amount of the compensation payable under this section is such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss.
- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion.

- (4) Compensation is not payable under this section in respect of any loss:
 - (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or
 - (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source.
- (6) In this section *personal effects* does not include personal effects referred to in section 28.

28B Prohibition on increased premium under motor vehicle insurance policy

- (1) In this section:

authorised activity damage means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5).

insurance policy means policy of insurance in respect of damage to or destruction or loss of a vehicle.

insurer means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged

in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage.

Maximum penalty: 5 penalty units.

- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it.
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.

[4] Section 32 Application of Principal Act

Omit "section 52" from section 32 (1) (c).
Insert instead "sections 52, 52A and 52B".

[5] Schedule 1 Transitional and other provisions

Omit the heading to the Schedule. Insert instead:

Schedule 1 Savings and transitional provisions

(Section 35)

Part 1 General

1A Savings and transitional regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

WorkCover Legislation Amendment Act 1996

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

**Part 2 Workers Compensation (Bush Fire,
Emergency and Rescue Services) Act 1987**

[6] Schedule 1, Part 3

Insert after clause 2:

**Part 3 WorkCover Legislation Amendment Act
1996**

3 Operation of amendments

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section.

2.9 Workers' Compensation (Dust Diseases) Act 1942 No 14

[1] Section 6 Constitution of Fund

Insert "and" at the end of each of paragraphs (a) and (b) in section 6 (1) and insert at the end of section 6 (1) (d):

, and

- (e) all amounts that immediately before the commencement of this paragraph stood to the credit of the Dust Diseases Reserve Fund, and
- (f) all amounts contributed by insurers under subsection (6) or (7D).

[2] Section 6 (7C)

Omit the subsection. Insert instead:

(7C) The WorkCover Authority is to pay the contributions paid by insurers under subsections (6) and (7) to the board for payment into the Fund.

[3] Section 6 (7D)

Omit "Dust Diseases Reserve".

[4] Section 8 Certificate of medical authority and rates of compensation

Omit "sections 51 and 52" from section 8 (3) (b).

Insert instead "sections 51, 52, 52A and 52B".

[Minister's second reading speech made in—
Legislative Assembly on 20 November 1996
Legislative Council on 26 November 1996]



New South Wales

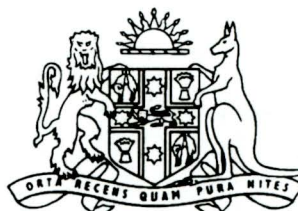
WorkCover Legislation Amendment Act 1996 No 120

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of other Acts	2

Schedules

1 Amendment of Workers Compensation Act 1987	3
2 Amendment of other Acts	55



New South Wales

WorkCover Legislation Amendment Act 1996 No 120

Act No 120, 1996

An Act to amend the *Workers Compensation Act 1987* to make further provision with respect to maximum workers compensation benefits, journey claims, deductions for previous injuries, weekly payments of compensation, conciliation of disputes, and in other respects; to amend certain other Acts; and for other purposes. [Assented to 3 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *WorkCover Legislation Amendment Act 1996*.

2 Commencement

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

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act set out in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

1.1 Amendments—new conciliation arrangements

[1] Section 3 Definitions

Insert the following definitions in section 3 (1) in alphabetical order:

existing claim has the meaning given by section 87D.

new claim has the meaning given by section 87D.

Principal Conciliator means the Principal Conciliator appointed under section 87F.

[2] Section 3 (6)

Insert after section 3 (5):

- (6) Notes included in the text of this Act do not form part of this Act.

[3] Part 4, Division 1A

Insert before Division 1 of Part 4:

Division 1A Special conciliation provisions for new claims

87D Definitions

- (1) In this Act:

existing claim means, subject to any regulations under this section that modify this definition:

- (a) any claim for compensation made before the commencement of this Division (as inserted by the *WorkCover Legislation Amendment Act 1996*), and
- (b) any claim for compensation made after that commencement that is a further claim in respect of an injury for which a claim was made before that commencement.

new claim means any claim for compensation that is not an existing claim.

- (2) The regulations can modify the definition of *existing claim* in this section and for that purpose can contain provisions of a savings or transitional nature with respect to the application of provisions of this Part to and in respect of claims that as a result of any such regulations become or cease to be existing claims.
- (3) In modifying the definition of *existing claim*, the regulations can even provide that no claims are existing claims (with the result that all claims will be dealt with as new claims), or alternatively can provide that all claims are existing claims (with the result that no claims will be dealt with as new claims).

87E Conciliation officers for new claims or existing claims

- (1) A person employed or appointed as a conciliation officer may be so employed or appointed as a conciliation officer for new claims (a *new claims conciliation officer*) or for existing claims (an *existing claims conciliation officer*). If a person is not employed or appointed as a new claims conciliation officer, the person is taken to have been employed or appointed as an existing claims conciliation officer.
- (2) New claims conciliation officers may be referred to as conciliation officers or as conciliators.

87F Principal Conciliator for new claims

- (1) Of the persons employed as new claims conciliation officers one is to be appointed by the head of the Department of Industrial Relations as the Principal Conciliator. When a person is appointed as the Principal Conciliator, any previous appointment of a person as the Principal Conciliator ceases to have effect.
- (2) The Principal Conciliator has and may exercise in respect of new claims all the functions of the Senior Conciliation Officer, in place of the Senior Conciliation Officer.

- (3) The Principal Conciliator can delegate to any new claims conciliation officer any of the Principal Conciliator's functions under this Part, including any function that the Principal Conciliator has under subsection (2), but cannot delegate this power of delegation.

[4] Section 96 Conciliation officers

Omit "Officers of the Authority" from section 96 (1).

Insert instead "Officers of the Authority or of the Department of Industrial Relations".

[5] Section 96 (4)

Insert after section 96 (3):

- (4) In the month of May in each year, the Minister is to prepare and forward to the WorkCover Authority an estimate of the expenditure to be incurred by the Department of Industrial Relations in relation to the exercise of the functions of conciliation officers under this Act by conciliation officers who are officers of that Department, including the remuneration payable to those officers.

[6] Section 97 Referral of disputes for conciliation

Insert at the end of section 97:

Note. Disputes involving new claims are to be referred to the Principal Conciliator, not the Senior Conciliation Officer.

- (3) The validity of a referral under this section is not affected by the incorrect referral of a dispute to the Principal Conciliator or the incorrect referral of a dispute to the Senior Conciliation Officer, and either can refer a dispute referred to him or her to the other.

[7] Section 98A Power of conciliation officer to require information

Insert after section 98A (1):

- (1A) If a dispute in respect of a new claim for weekly payments of compensation has been referred for conciliation by the worker and the person on whom the claim was made has or claims to have a reasonable excuse for failing to commence the weekly payments (or the balance of weekly payments in dispute) within 21 days after the claim was duly made, the information that a conciliation officer can require that person to furnish includes details of that excuse.

[8] Section 98A (6)

Insert after section 98A (5):

- (6) The regulations may make provision for or with respect to any of the following matters:
 - (a) excepting specified kinds of information or documents from the operation of this section,
 - (b) specifying cases and circumstances in which a conciliation officer is required to exercise the conciliation officer's powers under subsection (1),
 - (c) the circumstances in which information or documents furnished or produced to a conciliation officer under this section may or may not be furnished or produced by the conciliation officer to any other party to the dispute.

[9] Section 98D Certificates as to conciliation of disputes

Insert after section 98D (2):

- (2A) A conciliation officer is to issue a conciliation certificate for a dispute at the request of the Senior Conciliation Officer.

- (2B) The Senior Conciliation Officer may, either on the recommendation of the conciliation officer or on his or her own initiative, refer a conciliation certificate to the Registrar of the Compensation Court to form part of any file of the Court on proceedings commenced, or that may later be commenced, in relation to the dispute concerned.

[10] Section 98D (3)

Re-number paragraph (e) of section 98D (3) as paragraph (f) and omit "in the opinion of the conciliation officer" from that paragraph.

[11] Section 98D (3) (e)

Insert after section 98D (3) (d):

- (e) if conciliation was unsuccessful (wholly or partially) the reasons for that,

[12] Sections 98E, 98F

Insert after section 98D:

98E Time within which disputes must be referred to conciliation

The regulations may make provision for or with respect to limiting the time within which a dispute in respect of a new claim can be referred for conciliation under this Division.

98F Agreements arising from conciliation

- (1) If the conciliation of a dispute under this Division gives rise to an agreement between the parties, the conciliation officer may assist the parties in drafting written terms of agreement or in completing any approved standard form of agreement.

- (2) If the agreement relates to compensation under section 66 or 67, the conciliation officer can refer the agreement to the Senior Conciliation Officer for forwarding on to the Authority to be registered under section 66A. An application for registration of the agreement under section 66A is then taken to have been made by a party to the agreement.
- (3) If the agreement relates to other compensation, it may, with the consent of the parties, be registered by the Authority (in the case of existing claims) or by the head of the Department of Industrial Relations (in the case of new claims).
- (4) The following are examples of the provisions that an agreement arising from conciliation of a dispute can contain:
 - (a) provision for the employer or insurer to continue to pay compensation for a specified minimum period subject to compliance by the worker with specified conditions,
 - (b) provisions to cover matters such as the supply of medical certificates certifying as to incapacity and requirements for participation by the worker in the employer's workplace rehabilitation program, rehabilitation training or other specified activities designed to assist the worker to return to work,
 - (c) provisions designed to avoid or minimise further disputes between the parties, such as provisions requiring the parties to communicate with the conciliation officer concerning any dispute or potential dispute,
 - (d) provision for a review of the agreement at a specified time, either by the parties alone or in consultation with the conciliation officer,
 - (e) provisions designed to deal with any further disputes that might arise, so as to resolve them quickly while keeping costs to a minimum.

[13] Section 100A Proceedings before conciliation officers

Insert "in respect of an existing claim" after "dispute" wherever occurring in section 100A (2) and (3).

[14] Section 100A (2A)

Insert after section 100A (2):

- (2A) A person who is a party to any dispute in respect of a new claim is entitled to be represented by a barrister or solicitor, and by an agent of such a class as may be prescribed by the regulations. The conciliation officer may however refuse to permit a party to be represented by an agent if of the opinion that the agent does not have sufficient authority to make binding decisions on behalf of the party.

[15] Section 100A (3C)

Insert after section 100A (3B):

- (3C) A conciliation officer may, subject to any general directions by the Senior Conciliation Officer:
- (a) hold a conciliation conference with all relevant parties in attendance and, if the conciliation officer considers appropriate, with the employer (in the employer's own right, even if the employer is represented by an insurer) and with relevant health professionals and rehabilitation service providers in attendance, or a separate conciliation conference in private with any of them, and
 - (b) in a case where the employer concerned is represented by an insurer—nevertheless communicate directly with the employer about the provision of suitable employment for the worker or any other matter connected with the dispute.

[16] Section 100A (7)

Insert after section 100A (6):

- (7) An agreement that arises from the conciliation of a dispute under this Division is not admissible in proceedings before the Compensation Court, except:
 - (a) when the parties to the agreement otherwise agree, or
 - (b) in such circumstances as the regulations may specify.

[17] Section 102 Existing claims for weekly payments—commencement of payments

Insert at the end of section 102 (1):

This section does not apply to new claims.

[18] Section 102A

Insert after section 102:

102A New claims for weekly payments—commencement of payments

- (1) This section applies only to new claims.
- (2) Weekly payments of compensation are to commence as soon as practicable (but not later than 21 days) after the claim for compensation is duly made.
- (3) If the person on whom a claim is made disputes liability to make the weekly payments within 21 days after the claim for compensation is duly made, the obligation under this section to commence the weekly payments (or the balance of the weekly payments in dispute) does not apply.

Note. If liability is disputed the worker can refer the dispute to conciliation. See section 106FB.

- (4) If a person has a reasonable excuse for failing to commence weekly payments of compensation (or the balance of weekly payments in dispute) within 21 days after the claim for compensation is duly made, subsections (2) and (3) apply to the weekly payments as if a reference in those subsections to 21 days were a reference to the period that ends:
 - (a) 42 days after the claim for compensation is duly made, or
 - (b) when the person ceases to have that reasonable excuse,whichever is earlier.
- (5) An employer has such a reasonable excuse if:
 - (a) the employer has duly forwarded the claim for compensation to an insurer who the employer believes is liable to indemnify the employer in respect of the claim, and
 - (b) the employer has complied with all reasonable requests of the insurer with respect to the claim.
- (6) This section ceases to apply if the claim for compensation is withdrawn.

[19] Section 103 Offences—commencement of weekly payments

Insert “or 102A” after “102” in section 103 (1).

[20] Section 103A Disputes about continuation of weekly payments to be referred to conciliation within 21 days

Insert “This section does not apply if the claim concerned is a new claim.” after “Division 2.” in section 103A (1).

[21] Section 106CA

Insert before section 106D:

106CA Division applies only to existing claims

This Division applies only to court proceedings in respect of an existing claim.

[22] Part 4 Division 3B

Insert after Division 3A of Part 4:

**Division 3B Restrictions on commencing court
proceedings—new claims**

106FA Division applies only to new claims

This Division applies only to court proceedings in respect of a new claim.

**106FB Restrictions on commencing court proceedings about
weekly payments**

- (1) A worker cannot commence court proceedings in respect of weekly payments of compensation unless a dispute about liability to commence or to continue to make weekly payments of compensation to the worker has been referred for conciliation under Division 2 and either:
 - (a) the conciliation officer has issued a certificate of conciliation outcome, or
 - (b) the conciliation officer has given a notification under section 104 (3) in respect of the dispute, or
 - (c) a period of 21 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,whichever happens first.
- (2) A worker cannot refer a dispute about liability to commence or to continue to make weekly payments of compensation to the worker for conciliation under Division 2 until:
 - (a) the person on whom the claim is made has disputed liability to make the payments, or

- (b) the time within which the person on whom the claim is made is required under section 102A to commence those payments has elapsed without the person commencing to make those payments (or the balance of the weekly payments in dispute),

whichever happens first.

Note. Section 102A allows up to 42 days for the commencement of weekly payments of compensation.

- (3) A worker cannot commence court proceedings in respect of *related compensation* until subsection (1) allows the commencement of proceedings in respect of the weekly payments of compensation concerned. Related compensation is compensation under Division 3 of Part 3 that relates to the incapacity for work to which the weekly payments of compensation relate.
- (4) This section does not prevent the commencement of court proceedings in any of the following circumstances:
 - (a) if the proceedings concern an application for a determination under section 53,
 - (b) if the proceedings concern weekly payments of compensation that are the subject of an award already made by the Compensation Court,
 - (c) if the proceedings concern weekly payments of compensation in respect of an injury received before the commencement of this Act,
 - (d) any circumstances prescribed by the regulations.

106FC Restrictions on commencing court proceedings for lump sum compensation

- (1) A worker cannot commence court proceedings in respect of compensation under section 66 unless a dispute about that compensation has been referred for conciliation under Division 2 and either:
 - (a) the conciliation officer has issued a certificate of conciliation outcome, or

- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,

whichever happens first.
- (2) A worker cannot refer a dispute about compensation under section 66 for conciliation under Division 2 until:
 - (a) 12 weeks after the claim for the compensation is duly made, or
 - (b) the person on whom the claim is made disputes liability to pay the compensation,

whichever happens first.
- (3) If the person on whom a claim for compensation under section 66 is made has, within 12 weeks after that claim is duly made, duly applied under section 131 for reference of the matter to a medical panel, the worker can commence court proceedings in respect of that compensation 14 days after the panel has given its certificate under that section even if subsection (1) would otherwise prevent commencement of proceedings at that time.
- (4) A worker cannot commence court proceedings in respect of compensation under section 67 for pain and suffering resulting from a loss or further loss, or for related compensation, until this section allows the commencement of proceedings in respect of compensation under section 66 for the loss or further loss. Related compensation is compensation under Division 3 of Part 3 that relates to that loss, further loss or pain and suffering.
- (5) When a claim that is the subject of court proceedings is amended to include a claim (or further claim) for compensation under section 66, the proceedings are to be adjourned until:
 - (a) 12 weeks after the claim was amended, or

- (b) 12 weeks after the worker has provided the employer with particulars (including a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation to which the amendment relates,

whichever is later.

- (6) The parties to proceedings can agree, or the Compensation Court can order, that there be no adjournment or a shorter adjournment of the proceedings under subsection (5).
- (7) A claim for compensation that is the subject of court proceedings cannot be amended to include a claim for compensation under section 67 unless the amendment includes particulars of the amount of compensation claimed under that section. The amount claimed is not to be stated to be the maximum amount of compensation under that section except in a most extreme case, as referred to in section 67 (3).
- (8) If a worker joins another person as a party to proceedings in respect of a claim for compensation under section 66 or 67 without having made a claim on that person before commencing the proceedings, the Compensation Court may, if it considers that the failure to make a claim on the person has prejudiced the person in respect of the proceedings, adjourn the proceedings for such period as the Court considers appropriate to enable the person to properly consider the claim.
- (9) This section does not prevent the commencement of court proceedings in any circumstances prescribed by the regulations.

106FD Restrictions on commencing court proceedings about hospital, medical and other expenses

- (1) A worker cannot commence court proceedings in respect of compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses) or

Division 5 (Compensation for property damage) of Part 3 unless a dispute about that compensation has been referred for conciliation under Division 2 and either:

- (a) the conciliation officer has issued a certificate of conciliation outcome, or
- (b) a period of 42 days (or such other period as may be prescribed by the regulations) has elapsed after the dispute was referred for conciliation,

whichever happens first.

- (2) A worker cannot refer a dispute about compensation under Division 3 or 5 of Part 3 for conciliation under Division 2 until:

- (a) 28 days after the claim for compensation is duly made, or
- (b) the person on whom the claim is made disputes liability to pay the compensation,

whichever happens first.

- (3) This section does not prevent the commencement of court proceedings of the kind referred to in subsection (1) if the proceedings are also proceedings in respect of weekly payments of compensation or compensation under section 66 or 67 and are commenced in compliance with section 106FB or 106FC (whichever is appropriate).
- (4) This section does not prevent the commencement of court proceedings in such circumstances as may be prescribed by the regulations.
- (5) This section applies only in respect of new claims for compensation that are of a class prescribed by the regulations as subject to this section. If a new claim for compensation under Division 3 or 5 of Part 3 is not one in respect of which this section applies, section 106F applies in respect of the claim as if it were an existing claim.

106FE Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to:

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106FA, 106FB or 106FC applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

[23] Section 107A

Omit the section. Insert instead:

107A Authority or DIR may intervene in proceedings

- (1) The Authority or the head of the Department of Industrial Relations (*the DIR*) has a right to be heard in any proceedings before the Compensation Court.
- (2) The Authority or the head of the DIR may, for that purpose, be represented by a barrister or solicitor or an officer of the Authority or the DIR or by any other person.
- (3) In any such proceedings the Authority or the head of the DIR may apply for an order for which any party may apply in those proceedings.

[24] Section 119 Limit on recovery of costs unreasonably incurred

Insert after section 119 (2):

- (2A) In determining whether costs were unreasonably incurred the Court is to have particular regard to any conciliation certificate issued under section 98D certifying as to the unreasonable failure of a party to participate in conciliation. A party who denies unreasonable refusal to participate in conciliation has the onus of rebutting the conciliation certificate.

[25] Schedule 2 Provisions relating to appointed conciliation officers

Omit "Any such remuneration is payable from the WorkCover Authority Fund under the *WorkCover Administration Act 1989*." from clause 3.

[26] Schedule 6 Savings, transitional and other provisions, Part 10 Provisions relating to conciliation officers and weekly payments of compensation

Insert after clause 4:

5 New conciliation arrangements—WorkCover Legislation Amendment Act 1996

Amendments made by the *WorkCover Legislation Amendment Act 1996* do not affect the continuity of employment or appointment of conciliation officers employed or appointed as such immediately before the commencement of those amendments.

1.2 Amendments—employment required to be substantial contributing factor

[1] Section 9A

Insert after section 9:

9A No compensation payable unless employment substantial contributing factor to injury

- (1) No compensation is payable under this Act in respect of an injury unless the employment concerned was a substantial contributing factor to the injury.
- (2) The following are examples of matters to be taken into account for the purposes of determining whether a worker's employment was a substantial contributing factor to an injury (but this subsection does not limit the kinds of matters that can be taken into account for the purposes of such a determination):
 - (a) the time and place of the injury,
 - (b) the nature of the work performed and the particular tasks of that work,
 - (c) the duration of the employment,
 - (d) the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she has not been at work or had not worked in that employment,
 - (e) the worker's state of health before the injury and the existence of any hereditary risks,
 - (f) the worker's lifestyle and his or her activities outside the workplace.
- (3) A worker's employment is not to be regarded as a substantial contributing factor to a worker's injury merely because of either or both of the following:

- (a) the injury arose out of or in the course of, or arose both out of and in the course of, the worker's employment,
 - (b) the worker's incapacity for work, loss as referred to in Division 4 of Part 3, need for medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation service as referred to in Division 3 of Part 3, or the worker's death, resulted from the injury.
- (4) This section does not apply in respect of an injury to which section 10, 11 or 12 applies.

[2] Section 11A No compensation for psychological injury caused by reasonable actions of employer

Omit section 11A (1). Insert instead:

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.

[3] Section 11A (5)

Omit the subsection.

[4] Section 11A (6)

Insert at the end of section 11A (6):

This section does not affect section 9A (No compensation payable unless employment substantial contributing factor to injury).

[5] Section 11A (7)

Omit the subsection. Insert instead:

- (7) In the case of a claim for weekly payments of compensation in respect of incapacity for work resulting from psychological injury, the medical certificate required to accompany the claim must (in addition to complying with the requirements of section 92) use, for the purpose of describing the worker's condition, accepted medical terminology and not only terminology such as "stress" or "stress condition".

[6] Section 11A (8)

Insert "then (unless the insurer or self-insurer waives that requirement)" after "deficient claim".

[7] Section 11A (8) (a)

Insert "or 102A" after "102".

[8] Section 16 Aggravation etc of diseases—employer liable, date of injury etc

Omit "contributing factor" wherever occurring.
Insert instead "substantial contributing factor".

[9] Section 19 Diseases deemed work related

Omit "contributing factor" from section 19 (1) (b).
Insert instead "substantial contributing factor".

[10] Section 92 Making of claim for compensation

Insert after section 92 (1B):

- (1C) The medical certificate required to accompany a claim for weekly payments of compensation must include a statement of the medical practitioner's opinion (however

expressed) concerning the likelihood of the worker's employment being a substantial contributing factor to the injury or whether the worker's condition is consistent with his or her employment being such a factor.

- (1D) If a claim is deficient because subsection (1C) has not been complied with and the insurer or self-insurer concerned notifies the worker in writing of the deficiency (including details of what is required to comply with that subsection) as soon as practicable after receiving the deficient claim then (unless the insurer or self-insurer waives that requirement):
- (a) the claim is not considered to have been duly made for the purposes of section 102 or 102A until subsection (1C) is complied with, and
 - (b) court proceedings cannot be commenced in respect of the claim until subsection (1C) is complied with.
- (1E) All claims for compensation under section 66 and 67 in respect of an injury must, as far as practicable, be made at the same time. A legal practitioner or agent who acts for a worker when such a claim is made is not entitled to recover any costs from the worker or the employer in relation to any such claim made later (including such a claim made by later amendment of court proceedings) unless there is a good reason for the claim being made later.

**[11] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

Insert after clause 8:

**9 Requirement that employment be substantial
contributing factor**

- (1) Section 9A of this Act, as inserted by the *WorkCover Legislation Amendment Act 1996*, does not apply to injuries received before the commencement of that section.

-
- (2) The amendments made to section 11A, 16, 19 and 92 of this Act by Schedule 1.2 to the *WorkCover Legislation Amendment Act 1996* do not apply in respect of injuries received before the commencement of the amendments, except as provided by subclause (3).
 - (3) Section 92 (1C) and (1D) extend to apply to an injury that is a psychological injury within the meaning of section 11A that was received before the commencement of those subsections and after the commencement of section 11A.
 - (4) In a case where section 16 deems an injury to have happened within 12 months after the commencement of section 9A, sections 16 (2) and 68B (3) are, in their application in respect of any period of employment before the commencement of section 9A, to be read as if a reference in those provisions to employment that was a substantial contributing factor were a reference to employment that was a contributing factor (whether or not a substantial contributing factor).

1.3 Amendments—journey claims

[1] Section 10 Journey claims

Omit section 10 (1A). Insert instead:

- (1A) Subsection (1) does not apply if the personal injury is attributable to the serious and wilful misconduct of the worker.

[2] Section 10 (1B)

Omit “to have been caused by the fault of the worker”.
Insert instead “to be attributable to the serious and wilful misconduct of the worker”.

[3] Section 10 (1C)

Omit the subsection.

[4] Section 10 (6)

Omit the definition of *fault*.

**[5] Schedule 6 Savings, transitional and other provisions, Part 2
Provisions relating to liability for compensation**

Insert after clause 2 (2):

- (3) Section 10 of this Act continues to apply in respect of personal injury received by a worker before the commencement of the amendments made to that section by the *WorkCover Legislation Amendment Act 1996* as if those amendments had not been made.

**1.4 Amendments—reduction in maximum lump sum
compensation amounts**

[1] Section 66 Compensation for permanent injuries

Omit "\$132,300" from section 66 (1).
Insert instead "\$100,000".

[2] Section 66 (2)

Omit "\$160,950". Insert instead "\$121,000".

[3] Section 67 Compensation for pain and suffering

Omit "\$66,200" from section 67 (1).
Insert instead "\$50,000".

**[4] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert after clause 17:

**18 Reduction in lump sum compensation amounts—1996
amendments**

- (1) Despite sections 66 (3) and 67 (6), the compensation payable under section 66 or 67 in respect of any injury received before the commencement of the amendment of

those sections by the *WorkCover Legislation Amendment Act 1996* where no claim for compensation under either section 66 or 67 in respect of the injury was duly made by the worker before that commencement is to be calculated by reference to the requisite percentage of the amounts in force under the relevant section immediately after its amendment by that Act.

- (2) If proceedings are pending before the Compensation Court on a claim for compensation under section 66 or 67, a claim for that compensation is taken not to have been made before the commencement of the amendments to which this clause applies if:
 - (a) no claim for that compensation was duly made before the commencement of those amendments, or
 - (b) the worker did not, before the commencement of those amendments, give the employer particulars (including, in the case of a claim for compensation under section 66, a supporting medical report) sufficient to enable the employer to ascertain the nature and amount of the compensation claimed.
- (3) If this clause results, in a particular case, in a greater amount of compensation being payable in that case than would have been the case in the absence of this clause, this clause does not apply in that particular case.

1.5 Amendments—discontinuation of weekly payments after 2 years

[1] Section 38A Determination of whether worker is seeking suitable employment

Insert “and section 52A (Discontinuation of weekly payments after 2 years)” after “section 38” in section 38A (1).

[2] Section 38A (4)

Insert "or to the discontinuation of weekly payments under section 52A" after "section 38".

[3] Section 40A Assessment of incapacitated worker's ability to earn

Insert ", and about the possible effects of section 52A on the worker" after "those entitlements" in section 40A (2).

[4] Sections 52A and 52B

Insert after section 52:

52A Discontinuation of weekly payments after 2 years

- (1) Weekly payments of compensation in respect of incapacity for work are not payable for any period beyond the first 104 weeks of incapacity for work (whether total or partial, or a combination of both) in respect of which the worker has received or is entitled to receive weekly payments of compensation but only if one or more of the following paragraphs applies to the worker:
 - (a) the worker is partially incapacitated for work, is not suitably employed (within the meaning of section 43A), has not yet exhausted his or her entitlement to compensation under section 38 and is not seeking suitable employment (as determined in accordance with section 38A),
 - (b) the worker has received weekly payments (including payments during rehabilitation training) under section 38 for the maximum total period under that section and has subsequently unreasonably refused an offer of suitable employment for which the worker received that training,

-
- (c) the worker has received weekly payments under section 38 for the maximum total period under that section but has failed to obtain suitable employment solely because of the state of the labour market (rather than because of the effects of the worker's injury).
 - (2) Weekly payments of compensation do not cease to be payable pursuant to this section until the person liable to make the payments has given the worker at least 12 weeks notice (a *payment discontinuation notice*) of the person's intention to discontinue the payments under this section (even if this would result in the worker receiving the payments for more than 104 weeks). The regulations may provide that the requirements of this subsection do not apply in specified cases or classes of cases.
 - (3) The following requirements apply to a payment discontinuation notice:
 - (a) the notice must contain a statement of the grounds on which the notice is given (by reference to which of paragraphs (a), (b) and (c) of subsection (1) applies to the worker) and must inform the worker of action by the worker that is necessary to prevent the discontinuation of weekly payments,
 - (b) the notice is to be given to the worker personally or by post,
 - (c) the notice must contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self-insurers.
 - (4) The fact that the worker becomes temporarily totally incapacitated for work after service of the payment discontinuation notice does not prevent the discontinuation of weekly payments under this section.
-

- (5) The payment discontinuation notice can be given up to 12 weeks before the end of the 104 week period for which the worker has received or is entitled to receive weekly payments of compensation but cannot be given earlier than that.
- (6) Once a payment discontinuation notice is given, and so long as the worker has provided the worker's employer or the employer's insurer with a certificate by a medical practitioner specifying the expected duration of the worker's incapacity, the person paying the compensation must not discontinue payment, or reduce the amount, of the compensation during the period of incapacity so specified until the worker has received another 12 weeks of payments. This subsection does not apply to a reduction in weekly compensation as a result only of the application of different rates of compensation after the expiration of earlier periods of incapacity for which higher rates were payable (whether under section 38 or otherwise).
- (7) A payment discontinuation notice can be withdrawn at any time by notice given in writing to the worker by the person who gave the notice, and once withdrawn is taken never to have been given (for the purposes of the further operation of this section in relation to the cessation of weekly payments of compensation). This subsection does not prevent the giving of a further payment discontinuation notice.
- (8) In determining the period for which a worker has received or is entitled to receive weekly payments of compensation, separate periods during which the worker received or is entitled to receive those payments are to be aggregated.
- (9) The giving of a payment discontinuation notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.

52B Proceedings in Compensation Court on dispute about discontinuation of weekly payments after 2 years

- (1) The Compensation Court may, on the application of the worker made within 12 weeks after the payment discontinuation notice under section 52A is given to the worker, determine any dispute about the operation of that section. The regulations may make provision for modifying the operation of this subsection in its application to cases in which a payment discontinuation notice is not required to be given under section 52A.
- (2) The fact that proceedings are pending in the Compensation Court on an application under subsection (1) does not prevent the discontinuation of weekly payments of compensation in accordance with section 52A, subject to any order of the Compensation Court under this section.
- (3) When proceedings on a dispute are pending under subsection (1) before the Compensation Court, the worker may apply to the court for an interim award of weekly compensation pending determination of the dispute by the court.
- (4) The Compensation Court may make such an interim award only if satisfied that the worker is subject to hardship and there is likely to be an unusually long delay that is beyond the control of the worker (and the worker's representatives) until the hearing of the matter.
- (5) Any such interim award is to be made subject to the following conditions:
 - (a) the worker must supply to the worker's employer or another specified person from time to time medical certificates relating to the incapacity for work to which the award relates,
 - (b) if the worker is partially incapacitated for work and is not suitably employed (within the meaning of section 43A) and has not yet exhausted the worker's entitlement to compensation under section 38, the worker must take steps to obtain

suitable employment for the purposes of section 38 (as determined in accordance with section 38A).

- (6) Subject to any further order of the Compensation Court, interim payments of compensation under this section may be suspended while the worker is in breach of any conditions of the interim award or is guilty of unreasonable delay in taking some step in the proceedings on the dispute.
- (7) The Compensation Court can make a determination under this section whether or not at the time in respect of which the determination is made the worker is actually entitled to receive any weekly payment for incapacity or would be so entitled but for the operation of section 52A.
- (8) If the Compensation Court subsequently determines that a person is not liable under this Act to make the payments of compensation that have been paid in accordance with an interim award, the worker or other person who received those payments is not required to refund those payments unless the Court:
 - (a) is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, and
 - (b) orders the worker or other person to refund those payments or a specified part of those payments.
- (9) This section does not affect the recovery of weekly payments under section 58.

**[5] Schedule 6 Savings, transitional and other provisions, Part 4
Provisions relating to weekly payments of compensation**

Insert after clause 13:

14 Discontinuation of weekly payments after 2 years

- (1) Section 52A (as inserted by the *WorkCover Legislation Amendment Act 1996*) applies only to compensation payable in respect of an injury received after the commencement of that section, except as provided by this clause.

(2) Section 52A extends to the compensation payable in respect of an injury received before that commencement (but after the commencement of this Act), subject to the following:

- (a) A payment discontinuation notice must not be given until the person liable to make the weekly payments has given the worker a notice (a ***preliminary notice***) informing the worker about the existence and effect of section 52A and alerting the worker to the possible application of that section to the worker.
- (b) The earliest that a preliminary notice can be given to the worker is when the worker would still have to receive at least 52 weeks of weekly payments of compensation in order to bring the total number of weeks of weekly payments received by the worker (both before and after that commencement) to 104 (even if this would result in the worker receiving the payments for more than 104 weeks).
- (c) The preliminary notice is to contain such information and be in such form (if any) as the regulations may prescribe or, subject to the regulations, as the Authority may from time to time approve and notify to insurers and self insurers.
- (d) The earliest that a payment discontinuation notice under section 52A (3) can be given to a worker is:
 - (i) after a period in respect of which the worker has received or is entitled to receive at least 40 weeks of weekly payments since the preliminary notice was given, and
 - (ii) at least 12 weeks before the end of the period of 104 weeks referred to in paragraph (b),

even if this would result in the worker receiving the payments for more than 104 weeks.

- (e) For the purposes of the determination of the period of 104 weeks referred to in paragraphs (b) and (d), a worker is presumed to have received no more than 52 weeks of weekly payments before that commencement, with the result that if a worker received more than 52 weeks of weekly payments before that commencement the number of weekly payments in excess of 52 is to be disregarded.
- (f) In the case of any period of incapacity for work to which clause 5A (2) or 5B (4) of Part 4 of Schedule 6 applies, section 52A (2) (a) is to apply as if it read as follows:
 - (a) the worker is partially incapacitated for work, is not suitably employed, has not yet exhausted his or her entitlement to compensation under section 38 and either:
 - (i) the worker's employer has not failed to provide suitable employment, or
 - (ii) the worker's employer has failed to provide suitable employment but the worker is not seeking suitable employment or receiving rehabilitation training,as determined in accordance with section 38 as applicable to the case under clause 5A or 5B of Part 4 of Schedule 6.
- (3) Section 52A does not apply in any of the following cases:
 - (a) a case where the worker is receiving or entitled to receive weekly payments of compensation under a court award made before the commencement of that section,
 - (b) a case where court proceedings in which the worker is claiming weekly payments of compensation for which the employer or insurer has denied liability (including proceedings on an application for a determination under section 51 where there has been such a denial) are pending as at the commencement of that section,

-
- (c) a case where court proceedings on an application for a determination under section 51 are pending as at the commencement of section 52A and the employer or insurer has not denied liability to make weekly payments of compensation, but only if approval under section 51 (1) (c) has been given before that commencement.
 - (4) The giving of a preliminary notice does not constitute an admission of liability by an employer or insurer under this Act or independently of this Act.
 - (5) The regulations may provide that this clause or specified provisions of this clause do not apply in specified cases or classes of cases.

1.6 Amendments—deduction for previous injuries and pre-existing conditions and abnormalities

[1] Section 66A Registration of agreements for compensation

Omit “section 71” from section 66A (7).

Insert instead “this Part”.

[2] Section 68 Proportionate loss of use

Insert after section 68 (3):

- (4) This section does not apply to a loss for which the Table to this Division provides a range of percentages.

[3] Sections 68A and 68B

Omit section 68A. Insert instead:

68A Deduction for previous injury or pre-existing condition or abnormality

- (1) In determining the compensation payable under this Division for a loss, there is to be a deduction for any proportion of the loss that is due to any previous injury

(whether or not it is an injury for which compensation has been paid or is payable under this Division) or that is due to any pre-existing condition or abnormality.

- (2) The proportion of a loss that is required to be deducted because of subsection (1) is the ***deductible proportion*** for that loss.
- (3) If another loss (the ***secondary loss***) was suffered by the worker as a consequence of a loss (the ***primary loss***) for which there is a deductible proportion under subsection (1) and both losses resulted from the same injury, then in determining the compensation payable under this Division for the secondary loss there is to be a deduction of the proportion equal to the deductible proportion for the primary loss.
- (4) Subsection (3) does not limit the application of subsection (1) in relation to the secondary loss, with the result that there can be a deductible proportion for the secondary loss in its own right under subsection (1) (as well as under subsection (3) for the loss as a secondary loss).
- (5) This section is not limited to applying in respect of a loss of a proportion of a thing mentioned in the Table to this Division and applies even if the loss consists of the loss of all of such a thing.
- (6) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding litigation) that the deductible proportion for the loss (or the relevant part of it) is 10% of the loss, unless this assumption is at odds with the available evidence.

Note. If subsection (6) applies in a particular case to require it to be assumed that the deductible proportion is 10% and the loss in that case is (for example) 30% of the loss of the use of the right arm, the deductible proportion for the loss is 3% (that is, 10% of 30%).

-
- (7) The reference in subsection (6) to medical evidence is, in the context of court proceedings, a reference to medical evidence properly admitted in the proceedings and accepted or preferred by the court.
 - (8) Section 70 applies for the purpose of determining the extent (if any) that a worker's loss of hearing is due to presbycusis.

68B Deductions under section 68A—operation of sections 15, 16, 17 and 22

- (1) When determining the compensation payable for a loss for the purposes of the apportionment of liability under section 22, there is to be no deduction under section 68A for any proportion of the loss that is due to an injury in respect of which liability is to be apportioned (but without affecting any deduction under that section for any proportion of the loss that is due to any other injury or that is due to any pre-existing condition or abnormality).
- (2) When determining the compensation payable in a case in which section 15 applies (disease of such a nature as to be contracted by a gradual process) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality).
- (3) When determining the compensation payable in a case in which section 16 applies (an injury that consists in the aggravation, acceleration, exacerbation or deterioration of a disease) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment that was a

substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment that was a substantial contributing factor to the aggravation, acceleration, exacerbation or deterioration or that is due to any pre-existing condition or abnormality).

- (4) When determining the compensation payable in a case in which section 17 applies (loss of hearing) there is to be no deduction under section 68A for any proportion of the loss that is due to the worker's employment (after the commencement of this Act) by a previous employer in employment to the nature of which the disease was due (but without affecting any deduction under that section for any proportion of the loss that is not due to the worker's employment in employment to the nature of which the disease was due or that is due to any pre-existing condition or abnormality).

[4] Section 71 Further loss of function—occupational diseases

Omit the section.

[5] Schedule 6 Savings, transitional and other provisions, Part 6 Provisions relating to compensation for non-economic loss (Table of Disabilities)

Insert at the end of the Part:

19 Deduction for previous injuries and pre-existing conditions and abnormalities

- (1) The amendments made by the *WorkCover Legislation Amendment Act 1996* that amended sections 68 and 68A and repealed section 71 are taken to have had effect from the commencement of this Act, but not so as to affect:
- (a) any award of compensation made before the date of commencement of the amendments, or

- (b) any compensation that a worker has received or agreed to receive before that date, or
 - (c) any award of, or compromise or settlement of a claim for, damages made before that date, or
 - (d) any court proceedings commenced by a worker for damages from the worker's employer (or other person referred to in section 150) before that date.
- (2) If compensation has been paid or has become payable under section 16 of the former Act for a loss of a thing, section 68A applies to the determination of compensation under Division 4 of Part 3 of this Act for a further loss of that thing regardless of whether the description of the loss in section 16 of the former Act differs from the corresponding description of the loss in the Table to Division 4 of Part 3.

1.7 Amendments—evidentiary value of medical panel reports and certificates

[1] Section 119 Limit on recovery of costs unreasonably incurred

Insert at the end of section 119 (2) (c):

, or

- (d) in connection with an unsuccessful application by the party to admit further evidence in respect of matters of which a certificate or report of a medical panel that has been admitted in evidence in the proceedings is evidence (as provided by section 136 (1A)) and the court is of the opinion that the application was frivolous or vexatious.

[2] Section 131 Referral of medical disputes to referee or panel on application of worker or employer

Omit section 131 (5E).

[3] Section 136 Admissibility and evidentiary value of certificates and reports of medical referees and panels

Insert after section 136 (1):

- (1A) In any proceedings before the Compensation Court, a certificate or report given by a medical panel is to the extent that it relates to the worker's condition (and except to the extent that it is conclusive evidence under this Division) prima facie evidence of the matters in the certificate or report.
- (1B) When a certificate or report given by a medical panel is admitted in evidence in proceedings before the Compensation Court no further evidence is to be admitted in the proceedings in respect of the matters of which the certificate or report is prima facie evidence, except with the leave of the Court.

[4] Schedule 6 Savings, transitional and other provisions, Part 12 Provisions relating to medical examinations and disputes

Insert after clause 7:

8 Evidentiary value of certificates and reports of medical panels

The amendments made to sections 119 and 136 of this Act by the *WorkCover Legislation Amendment Act 1996* extend to a certificate or report given after the commencement of those subsections in respect of an injury received before that commencement, but those amendments do not apply in respect of court proceedings pending or determined as at their commencement.

1.8 Amendments—marketing of legal and agency services

[1] Section 148B Definitions

Re-number paragraph (b) of the definition of *protected claim* as paragraph (c) and insert before that paragraph:

- (b) a claim for the cost of provision of a hearing aid, and

[2] Section 148B (1A)

Insert after section 148B (1):

- (1A) A reference in this Division to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made). For example, section 148C does not require that a claim be made before the conduct described in that section can be considered to be prohibited conduct.

[3] Section 148HA

Insert after section 148H:

148HA Power to restrict or ban recovery of costs by solicitors

- (1) The Authority can by notification given to insurers and self-insurers direct that a solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.
- (2) Such a notification cannot be given unless the Authority is satisfied that the solicitor or a member of the firm of solicitors or a voting shareholder of the solicitor corporation is a director of or has a financial interest in an agent and:
- (a) the agent has persistently engaged in conduct that constitutes a contravention of section 148D or 122 (5), or
- (b) a director of the agent or other person concerned in the management of the agent has persistently engaged in any such conduct.
- (3) Before the Authority gives such a notification it must give the solicitor, solicitor corporation or firm of solicitors a reasonable opportunity to make written submissions to the Authority on the matter.

- (4) The effect of a notification under this section is that the solicitor, solicitor corporation or firm of solicitors specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force.
- (5) A solicitor, solicitor corporation or firm of solicitors aggrieved by a notification under this section can appeal against the notification to the Compensation Court within 14 days after the notification is given. An appeal does not stay the operation of the notification unless the Compensation Court otherwise orders.
- (6) A notification remains in force until it is withdrawn. A notification can be withdrawn at any time by the Authority by giving notice of withdrawal in writing to insurers and self-insurers and to the solicitor, solicitor corporation or firm of solicitors concerned.
- (7) For the purposes of this section, a *financial interest* in an agent is a share in the capital of the business conducted by the agent or any entitlement to receive any income derived from the business or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise.

[4] Section 148J Past conduct included in assessing persistent conduct

Omit "section 148H and 148I".

Insert instead "sections 148H, 148HA and 148I".

[5] Section 148J (2)

Insert at the end of section 148J (2):

For the purposes of section 148HA, at least one instance of the conduct must have occurred after the commencement of that section.

[6] Section 148L

Insert after section 148K:

148L Regulation of advertising

- (1) The regulations may make provision for or with respect to regulating (including prohibiting) conduct by any person (including advertising) that relates to the marketing of services to be provided by a lawyer or agent in connection with claims for compensation under this Act.
- (2) A regulation may not be made under this section except with the concurrence of the Minister administering the *Legal Profession Act 1987*.
- (3) Any such regulation can impose a penalty not exceeding 200 penalty units for any contravention of the regulations.

[7] Schedule 6 Savings, transitional and other provisions, Part 9 Provisions relating to notice of injury and claims for compensation

Insert at the end of clause 6:

- (2) The amendment made by the *WorkCover Legislation Amendment Act 1996* to insert section 148B (1A) is made for the purpose of the removal of doubt and accordingly is taken to have had effect from the commencement of that section as inserted by the *WorkCover Legislation Amendment Act 1995*.

1.9 Amendments—transfer of WorkCover Authority functions to Public Trustee

[1] Sections 29 and 30

Omit “the Authority” and “The Authority” wherever occurring. Insert instead “the Public Trustee” and “The Public Trustee” respectively.

[2] Section 31 Payment in respect of dependent children

Omit "to the Authority".

Insert instead "to the Public Trustee in trust".

[3] Section 31

Omit "by the Authority".

Insert instead "by the Public Trustee".

[4] Section 83 Manner of payment of compensation

Insert "or the Public Trustee" after "the Authority" in section 83 (7).

[5] Section 85 Payments to Public Trustee for benefit of beneficiary

Omit "to the Authority" where firstly occurring.

Insert instead "to the Public Trustee in trust".

[6] Section 85

Omit "the Authority" and "The Authority" wherever occurring (except where firstly occurring).

Insert instead "the Public Trustee" and "The Public Trustee" respectively.

[7] Section 86

Omit the section. Insert instead:

86 Public Trustee's powers of investment

- (1) All amounts held by the Public Trustee under this Act are to form part of the common fund under section 36A of the *Public Trustee Act 1913* and are available for investment as provided by that Act.

-
- (2) A power conferred by this Division on the Public Trustee to invest money for the benefit of a person includes a power to invest the money in any manner that the Public Trustee is authorised under the *Public Trustee Act 1913* to invest money held in trust by the Public Trustee.

[8] Section 87 Unclaimed money

Omit "the Authority" wherever occurring.
Insert instead "the Public Trustee".

**[9] Schedule 6 Savings, transitional and other provisions, Part 19
Miscellaneous provisions**

Insert after clause 5:

6 Transfer of functions from Authority to Public Trustee

- (1) In this clause:
the Public Trustee amendments means the amendments made by Schedule 1.9 to the *WorkCover Legislation Amendment Act 1996*.
- (2) An application made under section 29 or 30 of this Act to or by the Authority before the commencement of the Public Trustee amendments is to continue and be dealt with as if those amendments had not been made.
- (3) A decision of the Authority under section 29 is, after the commencement of the Public Trustee amendments, taken to be a decision of the Public Trustee.
- (4) All money and investments belonging to the common fund, Income Suspense Account or Investment Guarantee Account referred to in section 86 of this Act are to be transferred from the Authority to the Public Trustee, to form part of the common fund under section 36A of the *Public Trustee Act 1913*.

- (5) Compensation paid to the Authority under section 85 of this Act is after the commencement of the Public Trustee amendments taken to have been paid to the Public Trustee under that section. Anything done by the Authority under sections 85–87 is after the commencement of the Public Trustee amendments taken to have been done by the Public Trustee.
- (6) The Public Trustee amendments do not affect any liability of the Authority that arose before the commencement of those amendments or that arises after that commencement in respect of any act or omission by the Authority before that commencement. Any such liability remains a liability of the Authority and does not (as a result of those amendments) become a liability of the Public Trustee.

1.10 Amendment—rules and regulations with respect to medical evidence

Section 137 Rules of Court and regulations with respect to medical evidence

Insert “(including the exclusion of any such medical report for non-compliance with any requirement for the disclosure of the medical report)” after “panels” in section 137 (b).

1.11 Amendments—making a claim for compensation

[1] Section 92 Making of claim for compensation

Omit section 92 (4B). Insert instead:

- (4B) The failure to make a claim within the period required by subsection (2) is not a bar to the recovery of compensation if the insurer or self-insurer concerned determines to accept the claim outside that period. An insurer or self-insurer cannot determine to accept a claim made more than 3 years after the injury or accident happened or after the date of death (as appropriate) except with the approval of the Authority.

[2] Section 92 (6)

Insert after section 92 (5):

- (6) The claim form prescribed by the regulations or approved by the Authority for the purposes of this section can include a form of authority to be signed by the claimant and authorising a provider of medical or related treatment, hospital treatment or occupational rehabilitation service to the claimant in connection with the injury to which the claim relates to give the insurer or self-insurer concerned or a conciliation officer information regarding the treatment or service provided or the worker's medical condition or treatment relevant to the claim.

1.12 Amendment—deemed employment of participants in workplace based training programs

Schedule 1 Deemed employment of workers

Insert after clause 17A:

18 Participants in training programs

- (1) The regulations may:
 - (a) declare a specified training program that includes the provision of workplace based training and involves the provision of Commonwealth funding to be a declared training program for the purposes of this clause, and
 - (b) specify a class of payments as payments that are taken to be wages in respect of a participant in a declared training program.
- (2) A person who is a participant in a declared training program is for the purposes of this Act taken to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the

person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.

- (3) A payment that is declared by the regulations to be wages in respect of a participant in a declared training program is taken for the purposes of this Act to be the participant's wages in the employment by the person who provides the workplace based training.
- (4) Except to the extent that the regulations may otherwise provide, this clause does not apply in respect of participation by a person, or an injury received by a participant, in a training program before the training program became a declared training program for the purposes of this clause.

1.13 Amendment—penalty increase (requirement to keep register of injuries)

Section 90 Register of injuries

Omit "20 penalty units" from section 90 (5).
Insert instead "50 penalty units".

1.14 Amendments—misleading conduct by insurers and brokers

[1] Section 156A

Insert after section 156:

156A Misleading conduct by insurers and brokers with respect to business insurance

- (1) In this section:

broker means a person who is an insurance intermediary within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth.

insurer means a person who carries on insurance business as defined in the *Insurance Act 1973* of the Commonwealth.

- (2) An insurer or broker must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause an employer to believe that the insurance is comprehensive for business needs, unless:
 - (a) the insurance includes the insurance required by this Act, or
 - (b) the representation includes a clear statement to the effect that the insurance does not include workers compensation insurance and that workers compensation insurance is compulsory for employers.
- (3) An insurer or broker who contravenes this section is guilty of an offence.

Maximum penalty: 200 penalty units.
- (4) In any action under section 144, 145, 145A or 156 in respect of a failure by an employer to obtain or maintain in force a policy of insurance, the court hearing the action may order that a specified insurer or broker be joined as a party in the proceedings if the court thinks that the insurer or broker may be culpable in the matter.
- (5) An insurer or broker is culpable in a matter if it appears that the insurer or broker has engaged in conduct that constitutes a contravention of this section (whether or not the insurer or broker has been prosecuted for or convicted of an offence in respect of the contravention) and that conduct caused or contributed significantly to the failure by the employer to obtain or maintain the insurance concerned.
- (6) In any proceedings in which an insurer or broker is joined as a party under this section the court hearing the proceedings may, if satisfied that the insurer or broker is culpable in the matter, order that the insurer or broker is

to be jointly and severally liable with any other party in respect of any amount ordered to be paid by that other party in the proceedings or is to be separately liable, in place of that other party, as to the whole or a specified part of any amount that the other party might be ordered to pay in the proceedings.

**[2] Schedule 6 Savings, transitional and other provisions, Part 15
Provisions relating to insurers**

Insert after clause 24:

25 Conduct of insurers and brokers—1996 amendments

Section 156A (as inserted by the *WorkCover Legislation Amendment Act 1996*) does not apply in respect of conduct that took place before the commencement of the section.

**1.15 Amendments—compliance with provisions that restrict
commencement of proceedings**

**[1] Section 66B No proceedings to enter up award on agreement
for compensation**

Insert after section 66B (2):

- (3) The rules of the Compensation Court and the regulations may make provision for or with respect to:
 - (a) requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that the proceedings are not prevented by this section from being entertained by the Court, and

- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

[2] Section 106G

Insert after section 106F:

106G Court rules and regulations providing for evidence of compliance

The rules of the Compensation Court or the regulations may make provision for or with respect to:

- (a) requiring an application commencing proceedings in the Compensation Court to which section 106D, 106E or 106F applies to be accompanied by evidence (in the form of a certificate or other information provided for by the rules or regulations) that commencement of the proceedings is not prevented by any of those sections, and
- (b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the rules or regulations to accompany it.

1.16 Amendment—rate of interest on common law damages

Section 151M Payment of interest

Omit section 151M (6). Insert instead:

(6) Rate of interest

The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the *Supreme Court Act 1970* for the period concerned.

1.17 Amendments—special provisions for coal miners

[1] Schedule 6 Savings, transitional and other provisions, Part 4 Provisions relating to weekly payments of compensation

Omit paragraph (b) from clause 4A (1). Insert instead:

- (b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act.

[2] Schedule 6, Part 18 Special provision relating to coal miners

Insert after clause 1 (2):

- (3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:
 - (a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and
 - (b) occurs after the commencement of this subclause (as inserted by the *WorkCover Legislation Amendment Act 1996*), and
 - (c) occurs more than 78 weeks after the date of the injury concerned, and
 - (d) occurs during the first 104 weeks of incapacity.
- (4) For the purposes of subclause (3), the first 104 weeks of incapacity is the period of incapacity for work (whether total or partial, or both) of 104 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods.

1.18 Amendments—hearing loss claims

[1] Section 69A No compensation for less than 6% hearing loss

Omit section 69A (2).

[2] Section 69A (3)

Omit “or further loss” wherever occurring.

[3] Section 69A (3)

Omit “or that further loss reaches 5%”.

[4] Section 69A (4) (c) and (d)

Omit the paragraphs. Insert instead:

- (c) The worker suffers a further hearing loss of 5%. The worker is entitled in the usual way to compensation for the 5% further loss because the 6% threshold has already been passed (the total loss is now 13%).

[5] Section 69B Employer’s responsibility to pay for hearing loss tests

Omit “or further loss” wherever occurring in section 69B (1).

[6] Section 69B (1) (c)

Omit “(being hearing loss for which the worker has not received compensation under section 66)”.

[7] Section 69B (1) (d)

Omit the paragraph.

**[8] Schedule 6 Savings, transitional and other provisions, Part 6
Provisions relating to compensation for non-economic loss
(Table of Disabilities)**

Insert at the end of clause 9:

- (4) The amendments made to sections 69A and 69B by the
WorkCover Legislation Amendment Act 1996 are taken
to have had effect on and from the commencement of
those sections.

**1.19 Amendments—clarifications and miscellaneous
amendments**

**[1] Section 94A Insurers to give notice and reasons when liability
disputed**

Insert at the end of section 94A (3):

The regulations may require an insurer to give a copy of
a notice under this section to the claimant's employer.

**[2] Section 117 Regulations fixing maximum costs recoverable by
legal practitioners**

Omit "medical opinions" from section 117 (1) (b).

Insert instead "medical reports (including certificates)".

[3] Section 117 (3)

Omit "any report".

Insert instead "any medical report (including any certificate)".

**[4] Section 118 Regulations fixing maximum fees recoverable by
medical practitioners for medico-legal services**

Omit "medical opinion or certificate" from section 118 (1) (a).

Insert instead "medical report (including any certificate)".

[5] Section 118 (3)

Insert after section 118 (2):

- (3) Regulations under this section can fix costs and amounts by reference to costs and amounts fixed by regulations under the *Legal Profession Act 1987*.

[6] Section 122 Solicitor/client costs in compensation proceedings

Insert after section 122 (6):

- (7) A reference in this section to a claim includes a reference to a prospective claim (whether or not the claim is ever actually made).

[7] Section 152A Return-to-work plans for injured workers

Insert "or any such plan" after "section" in section 152A (3) (b).

[8] Section 168 Insurance premiums orders

Insert after section 168 (3A):

- (3B) The Insurance Premiums Order (1996–1997) (published in Gazette No 76 of 26 June 1996) is amended by omitting Note 15 from Table A (Basic Tariff Rates Notes), with effect from immediately before 4 pm on 30 June 1996. An insurance premiums order applying in any period before 30 June 1998 must not contain provision to the same or similar effect as that Note.

[9] Section 270 Worker's right to information

Omit "refuse" from section 270 (2) (a). Insert instead "fail".

[10] Schedule 6 Savings, transitional and other provisions, Part 11 Provisions relating to proceedings before Commissioners and the Compensation Court

Omit "the insertion" from clause 1.
Insert instead "the commencement".

[11] Schedule 6, Part 11

Insert after clause 2:

3 Restrictions on commencement of proceedings

The provisions of Division 3A of Part 4 (sections 106D–106F) extend to apply in respect of an injury received before the commencement of that Division, but do not apply in respect of court proceedings pending or determined as at that commencement.

[12] Schedule 6, Part 20 Savings and transitional regulations

Insert at the end of the list of Acts in clause 1 (1):

WorkCover Legislation Amendment Act 1996

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Compensation Court Act 1984 No 89

Section 14A Medical referees

Insert at the end of section 14A (2):

The Chief Judge is to consult concerning proposed appointments of medical referees with such employer and employee organisations as the Minister may nominate from time to time or, in the absence of any such nomination, as the Chief Judge considers appropriate.

2.2 Construction Safety Act 1912 No 38

[1] Section 17A Riggers, divers, powdermen and certain other tradespersons

Insert after section 17A (2) (c):

- (d) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person if the Authority is satisfied that the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence). In this paragraph, **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

[2] Section 17A (5AA)

Omit "may suspend". Insert instead "may, at any time, suspend".

[3] Section 17A (5AA)

Insert at the end of section 17A (5AA):

If the Authority is satisfied that the holder of a powderman's certificate of competency who has been served with a notice under subsection (5) has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence) the Authority may, at any time, suspend the certificate of competency pending the determination of the matter by the Authority under this subsection.

In this subsection, *violence* includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

2.3 Dangerous Goods Act 1975 No 68

[1] Section 27A Commissioner of Police to report on explosives licences and permits

Insert after section 27A (2) (d):

(d1) whether the applicant has a history of violence or threats of violence, with *violence* including behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*,

(d2) whether there is an apprehended violence order under Part 15A of the *Crimes Act 1900* in force with respect to the applicant,

[2] Section 28A

Insert after section 28:

28A Special provision for suspension or cancellation of explosives licences and permits

- (1) This section applies to licences and permits to which section 27A applies.

-
- (2) If the Authority thinks that the holder of a licence or permit cannot be trusted to have access to explosives because the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence), the Authority may, at any time, by notice in writing served on the holder require the holder to appear before the Authority at a time and place specified in the notice to show cause why the licence or permit should not be cancelled. The Authority may also, at any time, suspend the licence or permit pending determination of the matter under subsection (3).
 - (3) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of the licence or permit, the Authority may cancel the licence or permit.
 - (4) If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the *Crimes Act 1900* against the holder of a licence or permit to which this section applies (whether or not the person has been served with a notice under subsection (2)) the Authority may, at any time, suspend the licence or permit for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force.
 - (5) This section does not limit any powers of the Authority under section 28 with respect to a licence or permit to which this section applies.
 - (6) In this section **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

2.4 Industrial Relations Act 1996 No 17

Section 197A

Insert after section 197:

197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation

- (1) This section applies to the decision of a member of the Commission or of a Local Court constituted by an Industrial or other Magistrate to acquit a person of an offence against the occupational health and safety legislation.
- (2) This section applies to such a decision only if proceedings for the offence were instituted by an inspector appointed under that legislation or with the consent of the Minister or other officer authorised by that legislation to give such a consent.
- (3) An appeal lies to the Full Bench of the Commission in Court Session against a decision to which this section applies. The appeal is not limited to a question of law.
- (4) The appeal may be made by the Attorney General, the Minister, the Director of Public Prosecutions or the prosecutor in the proceedings in which the decision appealed against was made.
- (5) An appeal may be made within 21 days after the date of the decision appealed against or within such further time (not exceeding 3 months after that date) as the Full Bench or the Commission constituted by a Presidential Member allows. Further time may be allowed, either before or after the end of that 21-day period.
- (6) Section 191 applies to an appeal under this section.
- (7) On an appeal under this section, the Full Bench may:
 - (a) dismiss the appeal, or
 - (b) set aside the decision appealed against and make a decision in the matter in accordance with law (including the conviction and sentence of the defendant for the offence charged).
- (8) If the Full Bench on appeal convicts the defendant of the offence, the maximum penalty that the Full Bench may impose for the offence is the maximum penalty that the court that acquitted the defendant could have imposed for the offence.

-
- (9) This section has effect despite anything to the contrary in section 196 or 197.
- (10) In this section:
- occupational health and safety legislation* means the *Occupational Health and Safety Act 1983*, the regulations under that Act or the associated occupational health and safety legislation within the meaning of that Act.
- (11) This section does not apply to a decision made before the commencement of this section.

2.5 Occupational Health and Safety Act 1983 No 20

[1] Section 21B Plant or premises involved in serious occurrence

Omit "dangerous occurrence" wherever occurring.
Insert instead "serious occurrence".

[2] Section 21B (5)–(5B)

Omit section 21B (5). Insert instead:

- (5) The requirements of subsections (1) and (2) in relation to any particular serious occurrence apply only for the period of 36 hours following notification of the occurrence in accordance with this section, subject to any extension of that period under subsection (6).
- (5A) When a serious occurrence occurs at a place of work, the occupier of the place, or such other person as may be prescribed by the regulations, must give notice of the occurrence to the Authority within such time and in such manner as may be prescribed by the regulations.

Maximum penalty: 500 penalty units in the case of a corporation or 250 penalty units in any other case.

- (5B) The regulations may provide for the acknowledgment by the Authority of the receipt by it of a notice under this section in respect of a serious occurrence and may provide that such a notice is, for the purposes of subsection (5), taken not to have been given until receipt of it is so acknowledged.

[3] Section 21B (6)

Omit "requirements of this section".

Insert instead "requirements of subsections (1) and (2)".

[4] Section 31KA

Insert after section 31K:

31KA Power of inspectors to obtain information, documents and evidence

- (1) An inspector may, by notice in writing served on a person who is, on reasonable grounds, believed by the inspector to be capable of giving information, producing documents or giving evidence in relation to a possible contravention of the relevant legislation require the person to do any one or more of the following things:
- (a) to give an inspector, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any such information of which the person has knowledge,
 - (b) to produce to an inspector, in accordance with the notice, any such documents,
 - (c) to appear before an inspector at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.
- (2) A notice under this section must contain a warning that a failure to comply with the notice is an offence.

-
- (3) An inspector may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.
 - (4) An inspector may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an inspector to be a true copy.
 - (5) A certified copy provided under subsection (4) is receivable in all courts as if it were the original.
 - (6) Until a certified copy of a document is provided under subsection (4), the inspector who has possession of the document must, at such times and places as the inspector thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.

[5] Section 31M

Omit the section. Insert instead:

31M Protection from incrimination

- (1) A person is not excused from making a statement, giving or furnishing information or evidence or producing a document in accordance with a requirement under this Division on the ground that the statement, information, document or evidence may tend to incriminate the person.
- (2) However, any statement, information, document or evidence obtained from a person pursuant to a requirement under this Division is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 31N) if:
 - (a) the person claims before making the statement or giving, furnishing or producing the information, document or evidence that it might tend to incriminate the person, or

- (b) the person's entitlement to make a claim of the kind referred to in paragraph (a) was not drawn to the person's attention before the statement was made or the information, document or evidence was given, furnished or produced.
- (3) Subsection (2) does not prevent the admission in evidence in proceedings against a body corporate of any statement, information, document or evidence obtained pursuant to a requirement under this Division from a person as a competent officer of the body corporate.

[6] Section 31N Offence: obstruction and compliance

Omit section 31N (e). Insert instead:

- (e) in purported compliance with a requirement under this Division, or in answer to a question of an inspector asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular.

[7] Section 31U Review of notices

Omit section 31U (4). Insert instead:

- (4) The WorkCover Authority is to review a notice that is the subject of a duly made application for review. The notice is stayed (unless it is a prohibition notice) from when the application for review is received by the WorkCover Authority until the WorkCover Authority gives notice to the applicant of the result of the review. If the notice is a prohibition notice it can be stayed as provided by section 31UA.

[8] Section 31UA

Insert after section 31U:

31UA Application to Industrial Magistrate for stay of prohibition notice

- (1) If a person duly applies under section 31U for review of a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate for a stay of the notice.

-
- (2) A stay may be granted for such period as the court considers appropriate but not so as to extend past the time when notice of the result of the review is given to the applicant by the WorkCover Authority.
 - (3) A stay may be granted on such conditions as the court considers appropriate and may be revoked or amended by the court.

2.6 WorkCover Legislation Amendment Act 1995 No 89

[1] Schedule 1 Amendment of Workers Compensation Act 1987

Omit so much of item [6] as inserts section 11A (2) of the *Workers Compensation Act 1987*.

[2] Schedule 1 [43]

Omit so much of the item as inserts section 94A (5) and (6) of the *Workers Compensation Act 1987*.

[3] Schedule 1 [49], [50]

Omit the items.

[4] Schedule 3 Amendment of Compensation Court Act 1984

Omit items [1] and [2].

[5] Schedule 3 [29]

Omit so much of the item as inserts clause 8 of Part 4 of Schedule 4 to the *Compensation Court Act 1984*.

2.7 WorkCover Administration Act 1989 No 120

Section 19 Payments into and from Fund

Insert after section 19 (2) (b):

- (b1) expenditure incurred by the Department of Industrial Relations in relation to the exercise (whether before or after the commencement of this paragraph) of the functions of conciliation officers under the *Workers Compensation Act 1987* by conciliation officers who are officers of that Department, including the remuneration payable to those officers,
- (b2) the remuneration (including allowances) of conciliation officers appointed under section 96 (1A) of the *Workers Compensation Act 1987*,

2.8 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83

[1] Section 23 Definitions

Insert in alphabetical order:

relevant journey, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity.

[2] Section 24 Injuries to which this Part applies

Omit section 24 (1) (b). Insert instead:

- (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.

[3] Sections 28A and 28B

Insert after section 28:

28A Compensation for damage to personal effects, vehicles and other things

- (1) Compensation is payable under this Part in respect of:
 - (a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and
 - (b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and
 - (c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker.
- (2) The amount of the compensation payable under this section is such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss.
- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion.

- (4) Compensation is not payable under this section in respect of any loss:
 - (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or
 - (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source.
- (6) In this section *personal effects* does not include personal effects referred to in section 28.

28B Prohibition on increased premium under motor vehicle insurance policy

- (1) In this section:

authorised activity damage means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5).

insurance policy means policy of insurance in respect of damage to or destruction or loss of a vehicle.

insurer means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies.

- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged

in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage.

Maximum penalty: 5 penalty units.

- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it.
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.

[4] Section 32 Application of Principal Act

Omit "section 52" from section 32 (1) (c).
Insert instead "sections 52, 52A and 52B".

[5] Schedule 1 Transitional and other provisions

Omit the heading to the Schedule. Insert instead:

Schedule 1 Savings and transitional provisions

(Section 35)

Part 1 General

1A Savings and transitional regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

WorkCover Legislation Amendment Act 1996

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

**Part 2 Workers Compensation (Bush Fire,
Emergency and Rescue Services) Act 1987**

[6] Schedule 1, Part 3

Insert after clause 2:

**Part 3 WorkCover Legislation Amendment Act
1996**

3 Operation of amendments

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section.

2.9 Workers' Compensation (Dust Diseases) Act 1942 No 14

[1] Section 6 Constitution of Fund

Insert "and" at the end of each of paragraphs (a) and (b) in section 6 (1) and insert at the end of section 6 (1) (d):

, and

- (e) all amounts that immediately before the commencement of this paragraph stood to the credit of the Dust Diseases Reserve Fund, and
- (f) all amounts contributed by insurers under subsection (6) or (7D).

[2] Section 6 (7C)

Omit the subsection. Insert instead:

(7C) The WorkCover Authority is to pay the contributions paid by insurers under subsections (6) and (7) to the board for payment into the Fund.

[3] Section 6 (7D)

Omit "Dust Diseases Reserve".

[4] Section 8 Certificate of medical authority and rates of compensation

Omit "sections 51 and 52" from section 8 (3) (b).

Insert instead "sections 51, 52, 52A and 52B".

[Minister's second reading speech made in—
Legislative Assembly on 20 November 1996
Legislative Council on 26 November 1996]

10

11



New South Wales

WorkCover Legislation Amendment Bill 1996

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 "WC Act"), the *Occupational Health and Safety Act 1983* (the "OH&S Act") and the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* as follows:

- (a) to enable regulations to be made under the WC Act requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence that certain requirements imposed by various provisions of the Act as to when proceedings can be commenced have been complied with,
 - (b) to correct an obsolete cross-reference to a rate of interest applicable under rules of the Supreme Court in the provision of the WC Act that sets the rate of interest to be paid on common law workers compensation damages (thereby bringing the provision into line with the equivalent provision of the *Motor Accidents Act 1988*),
-

- (c) to disapply for the period between 78 weeks after injury and the payment of compensation for 104 weeks provisions of the WC Act applying in relation to coal miners that limit the rates of weekly payments of compensation for incapacity for work to the rates applicable under the former Act (before the commencement of the WC Act),
- (d) to change the requirements under the OH&S Act that prevent places and things involved in a dangerous workplace occurrence being moved or interfered with until midnight on the first working day after the day on which the occurrence was notified, so that the requirements will apply only until midnight on the next day (whether or not that day is a working day),
- (e) to remove the automatic stay that applies to a prohibition notice issued under the OH&S Act (a notice prohibiting activities that carry an immediate risk to health or safety) when a review of the notice is applied for and instead provide for an application for a stay to be made to an Industrial Magistrate,
- (f) to provide for the payment of compensation to emergency service workers and rescue association workers for damage, destruction or loss of personal property on their person, and vehicles, equipment and things in their possession while carrying out an authorised activity, and personal property and vehicles while on a journey to or from an authorised activity,
- (g) to make consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

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

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

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the *Occupational Health and Safety Act 1983*.

Clause 5 is a formal provision that gives effect to the Schedule of amendments to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

Schedule 1 Amendment of Workers Compensation Act 1987

Restrictions on the commencement of proceedings

Schedule 1 [1] and [2] deal with provisions inserted in the WC Act by the *WorkCover Legislation Amendment Act 1995*. Those provisions prevent certain proceedings being commenced or entertained in the Compensation Court unless certain preconditions have been met (generally that a dispute has arisen and a specified period has elapsed since the dispute arose). The amendments to be made enable regulations to be made that require an application commencing proceedings in the Compensation Court of the kind that are subject to the preconditions to be accompanied by evidence (in the form of a certificate or other information required by the regulations) that the preconditions have been met, and preventing the lodgment of an application that is not accompanied by the required evidence.

Schedule 1 [5] inserts a transitional provision that makes it clear that the provisions affected by the amendments made by Schedule 1 [1] and [2] (as enacted by the *WorkCover Legislation Amendment Act 1995*) extend to apply in respect of an injury received before the commencement of the provisions, but do not apply in respect of court proceedings pending or determined as at that commencement.

Rate of interest on common law damages

Schedule 1 [3] amends the provision that deals with the rate of interest payable on awards of damages in common law workers compensation matters. The amendment removes an obsolete cross-reference to the rate of interest applicable under rules of the Supreme Court and replaces it with a reference to the rate set under the provision of the *Supreme Court Act 1970* that provides for the payment of interest on Supreme Court judgment debts. The rate for workers compensation common law damages is set at three-quarters of that Supreme Court rate. The amendment brings the provision into line with the equivalent provision of the *Motor Accidents Act 1988*.

Additional special provisions for coal miners

Schedule 1 [6] amends the special transitional provisions that apply to coal miners. Under those provisions, a coal miner who is partially incapacitated but not provided with suitable duties is entitled to benefits at the total incapacity level ("deemed total incapacity") with no limit as to how long the

entitlement can continue (until retirement). In the same circumstances, other workers are entitled to a maximum 104 weeks deemed total incapacity compensation. The rates of total incapacity benefit and deemed total incapacity benefit for coal miners remained however at the lower scale of indexed rate applicable under the former Act. In practice coal miners' accident pay entitlements top up these rates to the higher levels applicable to other workers, but only for the first 78 weeks after injury.

The purpose of the amendment is to apply to coal miners the higher rates of total incapacity benefit and deemed total incapacity benefits applicable to other workers, but only during the period between 78 weeks after injury (ie the time at which accident pay top up cuts out) and payment of compensation for 104 weeks (the maximum period of deemed total incapacity entitlement for other workers). The amendment applies only to a period of incapacity that occurs after the amendment commences and results from an injury received after the commencement of the WC Act.

Schedule 1 [4] makes a consequential amendment.

Schedule 2 Amendment of Occupational Health and Safety Act 1983

Interference with plant or premises involved in dangerous occurrences

Schedule 2 [1] amends a provision that prohibits plant and areas of premises involved in dangerous occurrences from being used, moved, interfered with or disturbed. The prohibition currently applies until midnight on the following **working** day. The amendment changes this to midnight on the next day (whether or not the next day is a working day).

Stay of prohibition notices pending review

Schedule 2 [2] and **[3]** amend the provision that provides for an automatic stay of a prohibition notice (a notice prohibiting certain workplace activities that carry an immediate risk to health or safety) when a review of the notice is applied for. The amendment removes the automatic stay and replaces it with a right to apply to a Local Court constituted by an Industrial Magistrate for an order staying the prohibition notice. A court ordered stay cannot extend past the time when notice of the result of the review of the prohibition notice is given to the applicant by the WorkCover Authority.

Schedule 3 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

Payment of compensation to emergency service workers for personal property damage

Schedule 3 [3] provides for the payment of compensation to an emergency service worker or rescue association worker in the following circumstances:

- (a) destruction, damage or loss of personal effects on the worker while carrying out an authorised activity,
- (b) destruction, damage or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the authorised activity and owned by or in the possession or custody of the worker,
- (c) destruction, damage or loss of any vehicle used to transport the worker to or from the scene of an authorised activity and owned by or in the possession or custody of the worker.

The Act already provides for this kind of compensation to be payable to bushfire fighters and the new provisions generally follow the provisions for fire fighters.

The Act also already provides for the payment of compensation to emergency service workers and rescue association workers for damage to crutches, artificial aids, spectacles and clothing.

The Act is also amended to prevent a motor vehicle insurer from increasing an insurance premium because a vehicle was damaged in circumstances in which compensation is payable. This provision parallels an equivalent provision applicable to bushfire fighters.

Schedule 3 [1] and [2] make consequential amendments.

Schedule 3 [4] and [5] enact consequential savings and transitional provisions that provide for the making of savings and transitional regulations and that the new compensation provisions do not apply in respect of loss, destruction or damage that occurs before the commencement of the new provisions.



New South Wales

WorkCover Legislation Amendment Bill 1996

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of Occupational Health and Safety Act 1983 No 20	2
5 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83	2

Schedules

1 Amendment of Workers Compensation Act 1987	3
2 Amendment of Occupational Health and Safety Act 1983	6
3 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987	7



New South Wales

WorkCover Legislation Amendment Bill 1996

No , 1996

A Bill for

An Act to amend the *Workers Compensation Act 1987*, the *Occupational Health and Safety Act 1983* and the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to make further provision with respect to the commencement of proceedings before the Compensation Court, interest on damages, compensation for coal miners, workplace prohibition notices, and personal property damage compensation; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

 This Act is the *WorkCover Legislation Amendment Act 1996*.

2 Commencement

 This Act commences on a day or days to be appointed by 5
 proclamation.

3 Amendment of Workers Compensation Act 1987 No 70

 The *Workers Compensation Act 1987* is amended as set out in
 Schedule 1.

4 Amendment of Occupational Health and Safety Act 1983 No 20 10

 The *Occupational Health and Safety Act 1983* is amended as set
 out in Schedule 2.

**5 Amendment of Workers Compensation (Bush Fire, Emergency
 and Rescue Services) Act 1987 No 83**

 The *Workers Compensation (Bush Fire, Emergency and Rescue 15*
 Services) Act 1987 is amended as set out in Schedule 3.

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

[1] Section 66B No proceedings to enter up award on agreement for compensation

5

Insert after section 66B (2):

(3) The regulations may make provision for or with respect to:

(a) requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence (in the form of a certificate or other information provided for by the regulations) that the proceedings are not prevented by this section from being entertained by the Court, and

10

(b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the regulations to accompany it.

15

[2] Section 106G

Insert after section 106F:

106G Regulations providing for evidence of compliance

20

The regulations may make provision for or with respect to:

(a) requiring an application commencing proceedings in the Compensation Court to which section 106D, 106E or 106F applies to be accompanied by evidence (in the form of a certificate or other information provided for by the regulations) that commencement of the proceedings is not prevented by any of those sections, and

25

(b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the regulations to accompany it.

30

[3] Section 151M Payment of interest

Omit section 151M (6). Insert instead:

(6) Rate of interest

The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the *Supreme Court Act 1970* for the period concerned.

5

[4] Schedule 6 Savings, transitional and other provisions, Part 4 Provisions relating to weekly payments of compensation

Omit paragraph (b) from clause 4A (1). Insert instead:

10

(b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act.

15

[5] Schedule 6, Part 11 Provisions relating to proceedings before the Commissioners and the Compensation Court

Insert after clause 2:

3 Restrictions on commencement of proceedings

The provisions of Division 3A of Part 4 (sections 106D–106F) extend to apply in respect of an injury received before the commencement of that Division, but do not apply in respect of court proceedings pending or determined as at that commencement.

20

[6] Schedule 6, Part 18 Special provision relating to coal miners

25

Insert after clause 1 (2):

(3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:

(a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and

30

-
- (b) occurs after the commencement of this subclause (as inserted by the *WorkCover Legislation Amendment Act 1996*), and
- (c) occurs more than 78 weeks after the date of the injury concerned, and 5
- (d) occurs during the first 104 weeks of incapacity.
- (4) For the purposes of subclause (3), the first 104 weeks of incapacity is the period of incapacity for work (whether total or partial, or both) of 104 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods. 10

Schedule 2 Amendment of Occupational Health and Safety Act 1983

(Section 4)

- [1] **Section 21B Plant or premises involved in dangerous
occurrence** 5
- Omit "the first working day (that is, any day except a Saturday,
Sunday or public holiday) after" from section 21B (5).
Insert instead "the day after".
- [2] **Section 31U Review of notices**
- Omit section 31U (4). Insert instead: 10
- (4) The WorkCover Authority is to review a notice that is
the subject of a duly made application for review. The
notice is stayed (unless it is a prohibition notice) from
when the application for review is received by the
WorkCover Authority until the WorkCover Authority 15
gives notice to the applicant of the result of the review. If
the notice is a prohibition notice it can be stayed as
provided by section 31UA.
- [3] **Section 31UA**
- Insert after section 31U: 20
- 31UA Application to Industrial Magistrate for stay of
prohibition notice**
- (1) If a person duly applies under section 31U for review of
a prohibition notice, the person may apply to a Local
Court constituted by an Industrial Magistrate for a stay 25
of the notice.
- (2) A stay may be granted for such period as the court
considers appropriate but not so as to extend past the
time when notice of the result of the review is given to
the applicant by the WorkCover Authority. 30
- (3) A stay may be granted on such conditions as the court
considers appropriate and may be revoked or amended
by the court.

**Schedule 3 Amendment of Workers Compensation
(Bush Fire, Emergency and Rescue
Services) Act 1987**

(Section 5)

- [1] Section 23 Definitions** 5
- Insert in alphabetical order:
- relevant journey*, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity. 10
- [2] Section 24 Injuries to which this Part applies**
- Omit section 24 (1) (b). Insert instead: 15
- (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.
- [3] Sections 28A, 28B**
- Insert after section 28:
- 28A Compensation for damage to personal effects, vehicles and other things** 20
- (1) Compensation is payable under this Part in respect of:
- (a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and 25

WorkCover Legislation Amendment Bill 1996

Schedule 3 Amendment of Workers Compensation (Bush Fire, Emergency and
Rescue Services) Act 1987

- (b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and 5
 - (c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker. 10
- (2) The amount of the compensation payable under this section is such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss. 15
- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion. 20
25
- (4) Compensation is not payable under this section in respect of any loss:
 - (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or 30
 - (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source. 35
- (6) In this section:
personal effects does not include personal effects referred to in section 28.

28B Prohibition on increased premium under motor vehicle insurance policy

- (1) In this section:

authorised activity damage means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5). 5 10

insurance policy means policy of insurance in respect of damage to or destruction or loss of a vehicle.

insurer means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies. 15

- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage. 20 25

Maximum penalty: 5 penalty units.

- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it. 30
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.

WorkCover Legislation Amendment Bill 1996

Schedule 3	Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987
------------	---

[4] Schedule 1 Savings, transitional and other provisions

Omit the heading to the Schedule. Insert instead:

Schedule 1 Savings and transitional provisions

(Section 35)

Part 1 General

5

1A Savings and transitional regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

WorkCover Legislation Amendment Act 1996

10

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

15

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

20

- (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

25

Part 2 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

WorkCover Legislation Amendment Bill 1996

Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

[5] Schedule 1

Insert after clause 2:

**Part 3 WorkCover Legislation Amendment Act
1996**

3 Operation of amendments

5

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section.



New South Wales

WorkCover Legislation Amendment Bill 1996

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 "WC Act"), the *Occupational Health and Safety Act 1983* (the "OH&S Act") and the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* as follows:

- (a) to enable regulations to be made under the WC Act requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence that certain requirements imposed by various provisions of the Act as to when proceedings can be commenced have been complied with,
 - (b) to correct an obsolete cross-reference to a rate of interest applicable under rules of the Supreme Court in the provision of the WC Act that sets the rate of interest to be paid on common law workers compensation damages (thereby bringing the provision into line with the equivalent provision of the *Motor Accidents Act 1988*),
-

- (c) to disapply for the period between 78 weeks after injury and the payment of compensation for 104 weeks provisions of the WC Act applying in relation to coal miners that limit the rates of weekly payments of compensation for incapacity for work to the rates applicable under the former Act (before the commencement of the WC Act),
- (d) to change the requirements under the OH&S Act that prevent places and things involved in a dangerous workplace occurrence being moved or interfered with until midnight on the first working day after the day on which the occurrence was notified, so that the requirements will apply only until midnight on the next day (whether or not that day is a working day),
- (e) to remove the automatic stay that applies to a prohibition notice issued under the OH&S Act (a notice prohibiting activities that carry an immediate risk to health or safety) when a review of the notice is applied for and instead provide for an application for a stay to be made to an Industrial Magistrate,
- (f) to provide for the payment of compensation to emergency service workers and rescue association workers for damage, destruction or loss of personal property on their person, and vehicles, equipment and things in their possession while carrying out an authorised activity, and personal property and vehicles while on a journey to or from an authorised activity,
- (g) to make consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

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

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

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the *Occupational Health and Safety Act 1983*.

Clause 5 is a formal provision that gives effect to the Schedule of amendments to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

Schedule 1 Amendment of Workers Compensation Act 1987

Restrictions on the commencement of proceedings

Schedule 1 [1] and [2] deal with provisions inserted in the WC Act by the *WorkCover Legislation Amendment Act 1995*. Those provisions prevent certain proceedings being commenced or entertained in the Compensation Court unless certain preconditions have been met (generally that a dispute has arisen and a specified period has elapsed since the dispute arose). The amendments to be made enable regulations to be made that require an application commencing proceedings in the Compensation Court of the kind that are subject to the preconditions to be accompanied by evidence (in the form of a certificate or other information required by the regulations) that the preconditions have been met, and preventing the lodgment of an application that is not accompanied by the required evidence.

Schedule 1 [5] inserts a transitional provision that makes it clear that the provisions affected by the amendments made by Schedule 1 [1] and [2] (as enacted by the *WorkCover Legislation Amendment Act 1995*) extend to apply in respect of an injury received before the commencement of the provisions, but do not apply in respect of court proceedings pending or determined as at that commencement.

Rate of interest on common law damages

Schedule 1 [3] amends the provision that deals with the rate of interest payable on awards of damages in common law workers compensation matters. The amendment removes an obsolete cross-reference to the rate of interest applicable under rules of the Supreme Court and replaces it with a reference to the rate set under the provision of the *Supreme Court Act 1970* that provides for the payment of interest on Supreme Court judgment debts. The rate for workers compensation common law damages is set at three-quarters of that Supreme Court rate. The amendment brings the provision into line with the equivalent provision of the *Motor Accidents Act 1988*.

Additional special provisions for coal miners

Schedule 1 [6] amends the special transitional provisions that apply to coal miners. Under those provisions, a coal miner who is partially incapacitated but not provided with suitable duties is entitled to benefits at the total incapacity level ("deemed total incapacity") with no limit as to how long the

entitlement can continue (until retirement). In the same circumstances, other workers are entitled to a maximum 104 weeks deemed total incapacity compensation. The rates of total incapacity benefit and deemed total incapacity benefit for coal miners remained however at the lower scale of indexed rate applicable under the former Act. In practice coal miners' accident pay entitlements top up these rates to the higher levels applicable to other workers, but only for the first 78 weeks after injury.

The purpose of the amendment is to apply to coal miners the higher rates of total incapacity benefit and deemed total incapacity benefits applicable to other workers, but only during the period between 78 weeks after injury (ie the time at which accident pay top up cuts out) and payment of compensation for 104 weeks (the maximum period of deemed total incapacity entitlement for other workers). The amendment applies only to a period of incapacity that occurs after the amendment commences and results from an injury received after the commencement of the WC Act.

Schedule 1 [4] makes a consequential amendment.

Schedule 2 Amendment of Occupational Health and Safety Act 1983

Interference with plant or premises involved in dangerous occurrences

Schedule 2 [1] amends a provision that prohibits plant and areas of premises involved in dangerous occurrences from being used, moved, interfered with or disturbed. The prohibition currently applies until midnight on the following **working** day. The amendment changes this to midnight on the next day (whether or not the next day is a working day).

Stay of prohibition notices pending review

Schedule 2 [2] and **[3]** amend the provision that provides for an automatic stay of a prohibition notice (a notice prohibiting certain workplace activities that carry an immediate risk to health or safety) when a review of the notice is applied for. The amendment removes the automatic stay and replaces it with a right to apply to a Local Court constituted by an Industrial Magistrate for an order staying the prohibition notice. A court ordered stay cannot extend past the time when notice of the result of the review of the prohibition notice is given to the applicant by the WorkCover Authority.

Schedule 3 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

Payment of compensation to emergency service workers for personal property damage

Schedule 3 [3] provides for the payment of compensation to an emergency service worker or rescue association worker in the following circumstances:

- (a) destruction, damage or loss of personal effects on the worker while carrying out an authorised activity,
- (b) destruction, damage or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the authorised activity and owned by or in the possession or custody of the worker,
- (c) destruction, damage or loss of any vehicle used to transport the worker to or from the scene of an authorised activity and owned by or in the possession or custody of the worker.

The Act already provides for this kind of compensation to be payable to bushfire fighters and the new provisions generally follow the provisions for fire fighters.

The Act also already provides for the payment of compensation to emergency service workers and rescue association workers for damage to crutches, artificial aids, spectacles and clothing.

The Act is also amended to prevent a motor vehicle insurer from increasing an insurance premium because a vehicle was damaged in circumstances in which compensation is payable. This provision parallels an equivalent provision applicable to bushfire fighters.

Schedule 3 [1] and [2] make consequential amendments.

Schedule 3 [4] and [5] enact consequential savings and transitional provisions that provide for the making of savings and transitional regulations and that the new compensation provisions do not apply in respect of loss, destruction or damage that occurs before the commencement of the new provisions.



New South Wales

WorkCover Legislation Amendment Bill 1996

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Workers Compensation Act 1987 No 70	2
4 Amendment of Occupational Health and Safety Act 1983 No 20	2
5 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83	2

Schedules

1 Amendment of Workers Compensation Act 1987	3
2 Amendment of Occupational Health and Safety Act 1983	6
3 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987	7



New South Wales

WorkCover Legislation Amendment Bill 1996

No , 1996

A Bill for

An Act to amend the *Workers Compensation Act 1987*, the *Occupational Health and Safety Act 1983* and the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to make further provision with respect to the commencement of proceedings before the Compensation Court, interest on damages, compensation for coal miners, workplace prohibition notices, and personal property damage compensation; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *WorkCover Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Workers Compensation Act 1987 No 70

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

4 Amendment of Occupational Health and Safety Act 1983 No 20 10

The *Occupational Health and Safety Act 1983* is amended as set out in Schedule 2.

5 Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83

The *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* is amended as set out in Schedule 3. 15

Schedule 1 Amendment of Workers Compensation Act 1987

(Section 3)

[1] Section 66B No proceedings to enter up award on agreement for compensation

5

Insert after section 66B (2):

(3) The regulations may make provision for or with respect to:

(a) requiring an application commencing proceedings in the Compensation Court to be accompanied by evidence (in the form of a certificate or other information provided for by the regulations) that the proceedings are not prevented by this section from being entertained by the Court, and

10

(b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the regulations to accompany it.

15

[2] Section 106G

Insert after section 106F:

106G Regulations providing for evidence of compliance

20

The regulations may make provision for or with respect to:

(a) requiring an application commencing proceedings in the Compensation Court to which section 106D, 106E or 106F applies to be accompanied by evidence (in the form of a certificate or other information provided for by the regulations) that commencement of the proceedings is not prevented by any of those sections, and

25

(b) preventing the acceptance for lodgment of an application not accompanied by any evidence required by the regulations to accompany it.

30

[3] Section 151M Payment of interest

Omit section 151M (6). Insert instead:

(6) Rate of interest

The rate of interest to be used in any such calculation is three-quarters of the rate prescribed for the purposes of section 95 of the *Supreme Court Act 1970* for the period concerned.

5

[4] Schedule 6 Savings, transitional and other provisions, Part 4 Provisions relating to weekly payments of compensation

Omit paragraph (b) from clause 4A (1). Insert instead:

10

(b) in the case of a worker of the kind referred to in Part 18 (Special provision relating to coal miners) of this Schedule, if the incapacity results from an injury received before or after the commencement of Division 2 of Part 3 of this Act.

15

[5] Schedule 6, Part 11 Provisions relating to proceedings before the Commissioners and the Compensation Court

Insert after clause 2:

3 Restrictions on commencement of proceedings

The provisions of Division 3A of Part 4 (sections 106D–106F) extend to apply in respect of an injury received before the commencement of that Division, but do not apply in respect of court proceedings pending or determined as at that commencement.

20

[6] Schedule 6, Part 18 Special provision relating to coal miners

25

Insert after clause 1 (2):

(3) However, clauses 4 (1) (b) and 4A of Part 4 of this Schedule (as applying under this clause) do not apply in respect of any period of incapacity for work that:

(a) results from an injury received after the commencement of Division 2 of Part 3 of this Act, and

30

-
- (b) occurs after the commencement of this subclause (as inserted by the *WorkCover Legislation Amendment Act 1996*), and
 - (c) occurs more than 78 weeks after the date of the injury concerned, and 5
 - (d) occurs during the first 104 weeks of incapacity.
- (4) For the purposes of subclause (3), the first 104 weeks of incapacity is the period of incapacity for work (whether total or partial, or both) of 104 weeks after the worker becomes entitled to weekly payments of compensation in respect of the incapacity. In this subclause, a reference to a period of incapacity for work includes, in the case of separate periods of incapacity resulting from the same injury, a reference to the aggregate of those periods. 10

Schedule 2 Amendment of Occupational Health and Safety Act 1983

(Section 4)

- [1] **Section 21B Plant or premises involved in dangerous occurrence** 5
- Omit "the first working day (that is, any day except a Saturday, Sunday or public holiday) after" from section 21B (5).
Insert instead "the day after".
- [2] **Section 31U Review of notices**
- Omit section 31U (4). Insert instead: 10
- (4) The WorkCover Authority is to review a notice that is the subject of a duly made application for review. The notice is stayed (unless it is a prohibition notice) from when the application for review is received by the WorkCover Authority until the WorkCover Authority gives notice to the applicant of the result of the review. If the notice is a prohibition notice it can be stayed as provided by section 31UA. 15
- [3] **Section 31UA**
- Insert after section 31U: 20
- 31UA Application to Industrial Magistrate for stay of prohibition notice**
- (1) If a person duly applies under section 31U for review of a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate for a stay of the notice. 25
- (2) A stay may be granted for such period as the court considers appropriate but not so as to extend past the time when notice of the result of the review is given to the applicant by the WorkCover Authority. 30
- (3) A stay may be granted on such conditions as the court considers appropriate and may be revoked or amended by the court.

**Schedule 3 Amendment of Workers Compensation
(Bush Fire, Emergency and Rescue
Services) Act 1987**

(Section 5)

- [1] Section 23 Definitions** 5
- Insert in alphabetical order:
- relevant journey*, in relation to an emergency service worker or rescue association worker, means a journey between the place of abode or place of employment of the worker, or place from which the worker was called, and the place of carrying out an authorised activity, but only if the journey was made exclusively and genuinely for the purpose of carrying out that activity. 10
- [2] Section 24 Injuries to which this Part applies**
- Omit section 24 (1) (b). Insert instead: 15
- (b) arising out of or in the course of a relevant journey by the worker in relation to an authorised activity.
- [3] Sections 28A, 28B**
- Insert after section 28:
- 28A Compensation for damage to personal effects, vehicles and other things** 20
- (1) Compensation is payable under this Part in respect of:
- (a) the destruction of, damage to or loss of any personal effects on an emergency service worker or rescue association worker while carrying out an authorised activity or in the course of a relevant journey by the worker in relation to an authorised activity, and 25

WorkCover Legislation Amendment Bill 1996

Schedule 3 Amendment of Workers Compensation (Bush Fire, Emergency and
Rescue Services) Act 1987

- (b) the destruction of, damage to or loss of any vehicle, equipment or thing used in connection with the carrying out of an authorised activity at or near the scene of the carrying out of the authorised activity and owned by or in the possession or custody of an emergency service worker or rescue association worker, and 5
 - (c) the destruction of, damage to or loss of any vehicle used for the conveyance of an emergency service worker or rescue association worker on a relevant journey in relation to an authorised activity and owned by or in the possession or custody of the worker. 10
- (2) The amount of the compensation payable under this section is such amount as the Authority may, having regard to all the circumstances of the case, consider reasonable to indemnify the owner for the destruction, damage or loss. 15
- (3) The amount payable to a person under this section in respect of all destruction of and damage to and loss of personal effects on the person sustained on any one occasion is not to exceed the amount applicable under section 77 of the Principal Act in respect of damage referred to in that section reduced by any amount payable to the person under section 28 in respect of that occasion. 20
25
- (4) Compensation is not payable under this section in respect of any loss:
 - (a) occasioned by theft, unless the applicant has taken such action with a view to recovering the property stolen as the Authority thinks reasonable, or 30
 - (b) resulting from reasonable wear and tear.
- (5) Compensation is not payable under this section if the owner is entitled to adequate reimbursement under any policy of insurance or from any other source. 35
- (6) In this section:
personal effects does not include personal effects referred to in section 28.

28B Prohibition on increased premium under motor vehicle insurance policy

- (1) In this section:

authorised activity damage means, in relation to a vehicle, damage, loss or destruction that was caused to the vehicle in such circumstances and while the vehicle was in such ownership, possession or custody that in respect of that damage, compensation under section 28A was payable, or would have been so payable but for the operation of section 28A (5). 5 10

insurance policy means policy of insurance in respect of damage to or destruction or loss of a vehicle.

insurer means any person or body of persons, corporate or unincorporate, whose business is or includes the issue of insurance policies. 15

- (2) An insurer must not demand or receive by way of premium for the issue or renewal of an insurance policy in respect of a vehicle that has at any time been the subject of a claim, under any insurance policy, for authorised activity damage, any greater or other amount than (in accordance with any contract, or in accordance with any practice or course of dealing customarily followed by the insurer) the insurer would have charged in that case as the premium for that issue or renewal if the vehicle had not at any time been the subject of a claim for authorised activity damage. 20 25

Maximum penalty: 5 penalty units.

- (3) Any amount received by an insurer contrary to this section may be recovered from the insurer as a debt in a court of competent jurisdiction by the person who paid it. 30
- (4) An insurance policy is not illegal, void or unenforceable merely because of a contravention of this section.

WorkCover Legislation Amendment Bill 1996

Schedule 3	Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987
------------	---

[4] Schedule 1 Savings, transitional and other provisions

Omit the heading to the Schedule. Insert instead:

Schedule 1 Savings and transitional provisions

(Section 35)

Part 1 General

5

1A Savings and transitional regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

WorkCover Legislation Amendment Act 1996

10

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

15

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

20

- (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

25

Part 2 Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

WorkCover Legislation Amendment Bill 1996

Amendment of Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

[5] Schedule 1

Insert after clause 2:

**Part 3 WorkCover Legislation Amendment Act
1996**

3 Operation of amendments

5

Section 28A does not apply in respect of the destruction of, damage to or loss of any personal effects, vehicle, equipment or thing that occurred before the commencement of that section.

