

Accident Compensation (Miscellaneous Amendment) Bill

EXPLANATORY MEMORANDUM

- Clause 1 sets out the purpose of the Bill.
- Clause 2 provides for commencement provisions.
- Clause 3 amends the definition of "medical question" in section 5(1) of the **Accident Compensation Act 1985** consequential upon amendments made by the Bill to the benefits regime available under that Act and so as to facilitate the enhanced role conferred on the Medical Panels by other amendments made by the Bill.
- Clause 4 inserts a definition of "company" in section 5(1) of the **Accident Compensation Act 1985** and consequentially amends the definition of "remuneration" in that sub-section.
- Clause 5 makes a number of related amendments to the **Accident Compensation Act 1985** which are intended to have the effect of including superannuation benefits paid or payable by an employer in respect of a worker in the concept of remuneration for the purposes of that Act and the **Accident Compensation (WorkCover Insurance) Act 1993**. These amendments will operate with effect from 1 January 1998.

Sub-clause (1) inserts a definition of "superannuation benefit" in section 5(1) of the **Accident Compensation Act 1985** and makes a consequential amendment to the definition of "remuneration" in that sub-section.

Sub-clause (2) makes a consequential amendment to section 5(9) of the **Accident Compensation Act 1985**.

Sub-clause (3) inserts new sub-sections (15), (16) and (17) into section 5 of the **Accident Compensation Act 1985** which provide that a reference to remuneration includes a reference to superannuation benefits and clarify the operation of the provisions.

Sub-clause (4) inserts new sections 5D and 5E into the **Accident Compensation Act 1985** which support the application and administration of the provisions.

Sub-clauses (5), (6) and (7) make consequential amendments to sections 6, 8 and 9 of the **Accident Compensation Act 1985** respectively.

Clause 6 amends the definition of "worker" in section 5(1) of the **Accident Compensation Act 1985** so as to make it clear that a person participating in the Commonwealth Government's "work for the dole" scheme does not come within the scope of that definition.

Clause 7 repeals section 17 of the **Accident Compensation Act 1985**. This section no longer has any practical application.

Clause 8 makes a number of related amendments to the **Accident Compensation Act 1985** in respect of sporting contestants.

Sub-clause (1) amends section 16 of the Act so as to remove an existing exception to the application of that section. The effect of that amendment will be that if a person who is engaged by an employer to participate as a contestant in a sporting or athletic activity and who comes within the scope of sub-section (1) is injured while so participating or engaged in related training or travelling between residence and sporting venue will not be entitled to compensation in respect of that injury irrespective of whether or not the person receives remuneration from the employer for other things.

Sub-clauses (2) and (3) make amendments to the Act which have the effect of removing the remuneration paid to a person coming within the scope of section 16(1) in respect of participating in sporting or athletic activities or training or travelling for the purposes of calculating the employer's WorkCover premium and the worker's pre-injury average weekly earnings if he or she is otherwise injured in compensable circumstances.

Clause 9 amends section 20(1) of the **Accident Compensation Act 1985** by inserting a new function of the Authority to establish and

fund an advisory service to assist with dispute resolution processes.

- Clause 10 amends section 20B of the **Accident Compensation Act 1985** by inserting new powers of the Authority to enter into agreements or contracts with corresponding Commonwealth and interstate organisations and to provide services which are related or ancillary to the Authority's powers, functions and objectives.
- Clause 11 amends section 39 of the **Accident Compensation Act 1985** so as to increase the jurisdiction of the County Court and the Magistrates' Court to also hear and determine matters which relate solely to medical and like compensation and removes that jurisdiction from the Administrative Appeals Tribunal. The clause also makes amendments which give a like jurisdiction to the County Court and the Magistrates' Court in relation to matters arising under Part VI and makes it clear that those Courts do not have jurisdiction in relation to matters arising under Part V. The clause then makes a number of consequential amendments.
- Clause 12 amends section 44 of the **Accident Compensation Act 1985** by including Crimes Act prosecutions among the proceedings in which evidence given before the County Court and the Magistrates' Court may be used.
- Clause 13 amends section 49 of the **Accident Compensation Act 1985** so that it provides that proceedings to which that section refers may be commenced only after the issue of a certificate by a Conciliation Officer which the Conciliation Officer must issue if he or she is satisfied that all reasonable steps have been taken by the claimant to settle the dispute.
- Clause 14 amends section 50 of the **Accident Compensation Act 1985** by excluding costs at conciliation from a Court order for costs.
- Clause 15 amends section 53 of the **Accident Compensation Act 1985** to make it clear that a dispute in relation to a decision of the Authority under new section 93CD(2)(a) can be referred for conciliation.
- Clause 16 amends section 56 of the **Accident Compensation Act 1985** by reinforcing a Conciliation Officer's power to request documents

or information by providing that documents or information not provided on request cannot be used in evidence in subsequent proceedings. The clause also makes other amendments consequential on other changes.

- Clause 17 amends section 59 of the **Accident Compensation Act 1985** by increasing the period of arrears in weekly payments that can be the subject of a Conciliation Officer's direction.
- Clause 18 amends section 59 of the **Accident Compensation Act 1985** by enabling Conciliation Officers to give a general direction, limited by the nature of the circumstances, that compensation for medical and like costs be paid subject to and in accordance with section 99. The clause also clarifies the basis on which a Conciliation Officer may be satisfied that there is, or is not a genuine dispute for the purposes of the section. Finally, the clause makes a consequential amendment to section 128 of the Act.
- Clause 19 amends section 61A of the **Accident Compensation Act 1985** by including Crimes Act prosecutions among the proceedings to which the section applies.
- Clause 20 amends section 65 of the **Accident Compensation Act 1985** by including Crimes Act prosecutions among the proceedings in which information given to a Medical Panel may be used.
- Clause 21 makes amendments to the Act relating to the referral of medical questions to a Medical Panel and, in relation to the opinions of a Panel on medical questions, expanding the time within which an opinion may be given and providing that such an opinion is final and conclusive and binding on a Court as the answer to that medical question.
- Clause 22 makes an amendment consequential upon the amendment made by Clause 27.
- Clause 23 inserts new sub-sections into section 82 of the **Accident Compensation Act 1985** which provides that a recurrence, aggravation, acceleration, exacerbation or deterioration of a pre-existing injury or disease does not entitle the worker to compensation if the worker does not disclose the injury or disease as required by the section.

Clause 24 makes an amendment to section 89 consequential upon the introduction of new non-economic loss compensation by the amendments made by Clause 36.

Clause 25 amends section 91 of the **Accident Compensation Act 1985** by adopting the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fourth Edition), as modified, as the basis of the assessment of a degree of impairment under that section, and contains transitional provisions.

Clause 26 makes a transitional amendment with respect to compensation for death.

Clause 27 introduces a new regime for compensation for death.

Sub-clause (1) inserts new sections 92A, 92B and 92C into the **Accident Compensation Act 1985** which provide for revised compensation for the death of a worker.

New section 92A provides for revised lump sum compensation payable to the dependants of a deceased worker and defines classes of dependants for the purposes of these new provisions.

New section 92B provides for a new form of compensation by way of weekly pensions payable to dependant spouses and dependant children.

New section 92C provides rules governing the payment of the weekly pensions provided for in new section 92B.

Sub-clause (2) makes a number of consequential amendments.

Clause 28 substitutes section 93C of the **Accident Compensation Act 1985** to provide for extended transitional provisions in relation to the introduction of a new weekly payments regime by the amendments made by clauses 29 and 30. These transitional provisions apply to workers who have, before 12 November 1997, given, served or lodged a claim for weekly payments in respect of an injury and were, as at that date, entitled or on or after that date are determined to have been entitled as at that date, to weekly payments in accordance with sections 93A or 93B as in force as at that date.

Clause 29 introduces a new weekly payments regime by inserting new sections 93CA, 93CB, 93CC and 93CD into the Act.

New section 93CA provides for weekly payments during the "first entitlement period" as defined in the section. The section provides for rates of payment, depending on whether the worker has a current work capacity or no current work capacity (as defined in provisions inserted by clause 30).

New section 93CB provides for weekly payments during the "second entitlement period" as defined in the section, again providing for rates of payment, depending on whether the worker has a current work capacity or no current work capacity.

New section 93CC provides for the weekly payments payable after expiry of the second entitlement period to a worker who is assessed as having, and as likely to continue indefinitely to have, no current work capacity. In addition to providing for the rate of payment, the section provides for a periodic review of this assessment of the worker.

These new sections impose on a worker similar requirements as to return to work and participation in occupational rehabilitation as are imposed under the existing provisions.

New section 93CD provides for the weekly payments payable after the expiry of the second entitlement period to a worker who has a current work capacity and who successfully applies to the Authority or self-insurer for a determination that payments not cease. The determination may be made if the Authority or self-insurer is satisfied that the worker has returned to work as specified in the section and that, because of the injury, the worker is, and is likely to continue indefinitely to be, physically and mentally incapable of undertaking further or additional employment or work which would increase the worker's current weekly earnings. The section also gives the rate of payments to such workers.

Clause 30 consequentially amends section 5 of the Act by inserting new definitions of "current work capacity" and "no current work capacity". It also amends section 5A in relation to full-time students; and makes further amendments consequential upon changes in relation to weekly payments.

- Clause 31 amends section 93E of the **Accident Compensation Act 1985** to ensure that workers injured within the period of 52 weeks before attaining retirement age are entitled to at least 12 months of weekly payments.
- Clause 32 amends section 97 of the **Accident Compensation Act 1985** by adding a new sub-section which allows the Authority, authorised insurer or self-insurer to set off against weekly payments payable to a worker any amount the worker has been ordered by a Court to pay on being found guilty or convicted of an offence under the Act or under the **Crimes Act 1958**.
- Clause 33 makes an amendment to section 98 of the **Accident Compensation Act 1985** consequential upon the introduction of new non-economic loss compensation by the amendments made by Clause 36. The amendment provides that compensation under the section is payable only in respect of injuries arising before 12 November 1997.
- Clause 34 makes a similar amendment to section 98A of the Act consequential upon the introduction of new non-economic loss compensation by the amendments made by Clause 36.
- Clause 35 makes amendments to sections 104, 104A and 50 consequential upon the introduction of new non-economic loss compensation by the amendments made by Clause 36. These amendments are in the nature of changes to the dispute resolution process for claims under the superseded sections 98 and 98A. Amongst other things, these amendments extend from 60 days to 90 days the time within which the Authority, authorised insurer or self-insurer must comply with section 104(2), introduce a new costs rule and extend the scope of Ministerial directions under section 104A.
- Clause 36 inserts new sections 98C, 98D and 98D, which provide for entitlement to, the amounts of and the method of payment of, compensation payable for non-economic loss. The compensation payable under section 98C is paid according to the degree of permanent impairment suffered by the injured worker. Special provision is made for an injury resulting in the loss of a foetus as defined. Section 98E is a "no disadvantage" provision which ensures that workers who suffer a total loss specified in the Table to the section are compensated in accordance with that

section rather than section 98C if compensation under that section is greater than the amount of the worker's non-economic loss under section 98C. Section 98D provides for payment of compensation under section 98C by way of a lump sum and will apply until Clause 38 comes into operation.

Clause 37 makes amendments to various provisions consequential upon the introduction of new non-economic loss compensation by the amendments made by Clause 36.

Clause 38 will, when it comes into operation, substitute a new section 98D which sets out the way in which compensation under section 98C or 98E is to be paid, namely, as a single lump sum or by a combination of initial lump-sum and subsequent instalments depending on the amount involved.

Clause 39 amends section 99 of the **Accident Compensation Act 1985**, by limiting the circumstances in which the Authority, employer, authorised insurer or self-insurer is liable to pay the costs of services or burials or cremations carried out outside Australia, namely where there has been a prior approval or where there are circumstances of necessity or impracticability. The clause also amends sub-section (14) of section 99 by substituting the expression "ability to undertake the necessary activities of daily living" for the word "lifestyle" in paragraph (c).

Clause 40 amends section 100 to provide that the amounts mentioned in the new sub-section (2B) are to be indexed by reference to the consumer price index and makes consequential amendments and a minor technical amendment.

Clause 41 amends section 100(6) to provide that the maximum amount of damages recoverable under new section 135C is indexed and makes an amendment consequential upon changes made by clause 27.

Clause 42 substitutes section 102 in relation to notice of injury. The new section 102 maintains the existing requirements that notice of an injury must be given to the employer and that the giving of the notice is necessary for an injury to be compensable. However, a time limit for the giving of a notice is imposed and notice will no longer be deemed to have been given by the making of a claim. Provision is made for the waiver or extension of the time

limit if it was not reasonably practicable for the notice to have been given within that time, or if the failure to give notice within that time did not unfairly prejudice the employer or if reliance on the time limit would result in a serious injustice to the person.

- Clause 43 makes changes consequential upon the introduction of new non-economic loss compensation by the amendments made by Clause 36 and inserts a new section 104B which sets out the procedures relating to claims for compensation under section 98C. Under these procedures, if liability, as defined in the section, is rejected by the Authority, authorised insurer or self-insurer, any dispute as to that liability will be referred for conciliation and, if not resolved, determined by the County or Magistrates' Court. It is intended that, in these matters, the court will hear and determine only the issue of liability as defined.

Once liability is accepted or determined, the assessment of the degree of permanent impairment, if any, of the worker resulting from the injury to the worker and the determination whether the worker has an injury which is a total loss mentioned in the Table to new section 98E(1) are to be made, in the first instance, by a medical practitioner referred to in section 91(1)(b) chosen by the Authority, authorised insurer or self-insurer and, if the worker disputes this outcome, these matters must be referred by the Authority, authorised insurer or self-insurer as medical questions for the opinion of a Medical Panel. No other appeal will lie from an assessment or determination by a medical practitioner or the opinion of a Medical Panel.

- Clause 44 amends section 115 of the **Accident Compensation Act 1985** so as to remove from the scope of settlements under that section a worker's entitlement to compensation under section 99 of the Act.

- Clause 45 inserts new section 134A into the **Accident Compensation Act 1985**.

New sub-section (1) has the effect of abolishing the entitlement of a worker, or the dependants of a worker, to recover damages of any kind in a common law action.

New sub-section (2) provides that sub-section (1) does not prevent the recovery of damages in proceedings under Part III of the **Wrongs Act 1958** in the case of the death of a worker arising out of a transport accident and which also gives rise to an entitlement to compensation under the **Accident Compensation Act 1985**.

- Clause 46 contains consequential and transitional provisions relating to actions for damages.
- Clause 47 makes amendments to and inserts new sub-sections in section 135A of the **Accident Compensation Act 1985** which limits the operation of that section to injuries arising out of or in the course of or due to the nature of employment before 12 November 1997 and modifies the dispute resolution process for these cases. Modifications include a mandatory exchange of evidentiary material, a compulsory conference, an exchange of a statutory offer and a statutory counter offer and costs rules relating to these offers and mandatory time limits.
- Clause 48 inserts a new section which provides for the Minister to issue directions for or with respect to procedures under section 135A. A further new section imposes a special limitation period in respect of proceedings in accordance with section 135 and 135A.
- Clause 49 inserts new section 135C which, notwithstanding new section 134A, provides for a dependant of a worker to recover damages in proceedings under Part III of the **Wrongs Act 1958** for the death of a worker (other than proceedings coming within new section 134A(2)). The new section also provides a maximum amount that can be recovered as damages and contains other provisions governing aspects of the proceedings.
- Clause 50 makes a consequential amendment in relation to indemnity by a third party.
- Clause 51 inserts new section 138A of the **Accident Compensation Act 1985** which declares that all the provisions of Division 9 of Part IV contain matters that are substantive law and are not procedural in nature.
- Clause 52 amends section 160 of the **Accident Compensation Act 1985** to include a provision that a return to work plan must be prepared

and revised in accordance with guidelines issued by the Authority.

- Clause 53 amends section 179 of the **Accident Compensation Act 1985** so as to extend the application of Part VIIA in three respects: first, to claims under section 99 for the cost of a hearing aid; second, to include like claims (that is, in respect of hearing loss and hearing aids) made under the **Workers Compensation Act 1958**; third, to include activities in relation to prospective claims of this kind, even when the claim is not made.
- Clause 54 inserts new sub-sections in section 240A of the **Accident Compensation Act 1985** dealing with the retention of original books seized under the warrant until criminal proceedings are concluded, where the physical properties (for example, fingerprints or signs of tampering) of the books or their contents may be sought to be proved.
- Clause 55 substitutes a new provision for section 164 of the **Accident Compensation Act 1985** which also penalises non-compliance by an employer with the provisions of Part VI generally (for example, establishing occupational rehabilitation and risk management programs and return-to-work plans) and which increases the penalty for an offence by an employer from 20 penalty units to 120 penalty units.
- Clause 56 amends section 249(1) of the **Accident Compensation Act 1985** by clarifying the terms of this offence provision.
- Clause 57 amends section 249A of the **Accident Compensation Act 1985** so that it provides equally in relation to persons found guilty, but not convicted, of offences, and so that sub-sections (1) and (2) are consistent in their application to Crimes Act offences.
- Clause 58 amends section 252 of the **Accident Compensation Act 1985** by streamlining the provisions identifying the persons who may file charges under the Act, and adding a provision relating to taking affidavits for use in prosecutions.
- Clause 59 amends section 252 of the **Accident Compensation Act 1985** by providing for the Authority to issue and publish guidelines for the prosecution of offences under the Act and under the

**Accident Compensation (WorkCover Insurance) Act 1993
and the Crimes Act 1958.**

- Clause 60 inserts a new section relating to the limitation of jurisdiction of the Supreme Court.
- Clause 61 repeals an obsolete schedule.
- Clause 62 amends the **Accident Compensation (WorkCover) Act 1992** in relation to the limitation of jurisdiction of the Supreme Court.
- Clause 63 amends the **Constitution Act 1975** in relation to the limitation of jurisdiction of the Supreme Court.
- Clause 64 amends section 7 of the **Accident Compensation (WorkCover Insurance) Act 1993** in relation to the calculation of premium for the purposes of certain deemed WorkCover insurance policies.
- Clause 65 amends section 8 of the **Accident Compensation (WorkCover Insurance) Act 1993** consequential upon the inclusion of superannuation benefits as remuneration.
- Clause 66 substitutes a new section 19 of the **Accident Compensation (WorkCover Insurance) Act 1993** containing transitional provisions (consequential upon clauses 5 and 65) relating to the calculation of rateable remuneration under the Premiums Order.
- Clause 67 amends section 23(2) of the **Accident Compensation (WorkCover Insurance) Act 1993** by making it clear that an employer who is currently insured may be asked to certify rateable remuneration for a period when the employer was not insured.
- Clause 68 inserts new sub-sections in section 70 of the **Accident Compensation (WorkCover Insurance) Act 1993** dealing with the retention of original books seized under the warrant until criminal proceedings are concluded, where the physical properties (for example, fingerprints or signs of tampering) of the books or their contents may be sought to be proved.
- Clause 69 amends section 40 of the **Dangerous Goods Act 1985** by providing for the Authority to issue and publish guidelines for the prosecution of offences under that Act.

- Clause 70 amends section 26 of the **Equipment (Public Safety) Act 1994** by increasing the penalties that may be imposed for first indictable offences against that Act.
- Clause 71 amends section 28 of the **Equipment (Public Safety) Act 1994** by providing for the Authority to issue and publish guidelines for the prosecution of offences under that Act.
- Clause 72 amends section 4 of the **Occupational Health and Safety Act 1985** by excluding from the definition of "employee" persons participating in the Commonwealth Government's "work for the dole" program.
- Clause 73 amends section 47 of the **Occupational Health and Safety Act 1985** by increasing the penalties that may be imposed for first indictable offences against that Act.
- Clause 74 amends section 48 of the **Occupational Health and Safety Act 1985** by providing for the Authority to issue and publish guidelines for the prosecution of offences under that Act.
- Clause 75 amends Schedule 4 to the **Magistrates' Courts Act 1989** by increasing the amount of penalties that may be imposed by the Magistrates Court for indictable offences against **Occupational Health and Safety Act 1985, Dangerous Goods Act 1985** and **Equipment (Public Safety) Act 1994**.
- Clause 76 corrects an anomaly in section 16 of the **Workers Compensation Act 1958**.
- Clause 77 makes a consequential amendment to section 21 of the **Accident Compensation (Further Amendment) Act 1996**.

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