

1997

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

WORKERS' COMPENSATION (AMENDMENT) BILL (No. 2) 1997

EXPLANATORY MEMORANDUM

**Circulated by Authority of the
Minister for Industrial Relations
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Detail

Clause 1 refers to the short title of the Act.

Clause 2 provides for the commencement of the Bill This is a standard commencement clause

Clause 3 provides a definition of the Principal Act

Interpretation

Clause 4 amends the interpretation section (section 6) of the Principal Act by inserting and/or omitting definitions The definition of "injury" will include "stress" under "mental injury" "Medical gymnast" is replaced by "kinesiologist" under definition of "medical treatment"

A new subsection 1A is inserted into the Principal Act that excludes certain actions taken in a reasonable manner by or on behalf of an employer from the definition of mental injury or stress Such actions include transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a workers or provision of employment benefits to workers

Deemed total incapacity

Clause 5 inserts a new section 7C into the Principal Act This allows partial incapacity to be deemed as total incapacity This amendment will enable a worker, who is certified by a medical practitioner as being partially incapacitated, to be deemed as totally incapacitated, where the worker's employer cannot provide appropriate alternative employment and where the worker is unable to find appropriate alternative employment

Compensation for medical treatment

Clause 6 clarifies procedures for payment of travelling and accommodation expenses relating to attendance at medical examinations Section 11(3A)(b)(c) provides for payment of travelling expenses necessarily and reasonable incurred by a worker for obtaining medical treatment in respect to a compensable injury The amendment allows the Minister, by way of Regulation, to determine the costs described above The new Regulation will specify the amounts to be paid for travelling and accommodation expenses These allowances can also be adjusted in accordance with the Index number (as defined in Section 6 of the Act)

Clause 7 repeals sections 12 and 12A of the Principal Act and substitutes a new section 12A that provides for adjustment to benefits according to movements in the Consumer Price Index The formula now allows for changes in the base year used by the Australian Statistician for CPI calculation and a factor to correct for such changes is included in the formula

This section provides a protection against negative movements in the CPI index A negative

CPI figure will not result in changes to benefits. Any negative movements would be held over and aggregated with subsequent positive CPI movements. For example, a negative CPI of 0.2% would be added to a subsequent positive of 0.5% to give a net increase of 0.3%.

Prescribed insurance policies

Clause 8 inserts a definition for “wages, salaries and other forms of remuneration” to be used for the purposes of premium calculation.

This clause also allows a cover note to be a prescribed insurance policy.

Compulsory insurance - employers

Clause 9 inserts into the Principal Act a new section that allows a cover note to be a prescribed insurance policy only if it is in force for no more than 30 days. An employer either must have maintained a prescribed insurance policy (other than a cover note) or not have been an employer immediately before obtaining a cover note.

It also amends section 17B(5) of the Principal Act to allow the Nominal Insurer to recover from an employer an amount equal to double the amount of unpaid premium where a person is found to have contravened sections 17B(1) or 17B(2)(c) or 17B(2)(d) of the Principal Act.

Cover Notes

Clause 10 inserts a new section 17E into the Principal Act that prevents an insurer from issuing a cover note to an employer who has been without a prescribed insurance policy unless that period is 30 days or less.

It also allows an insurer to collect a premium in respect of periods for which a cover note was in force.

Funds for payments by Nominal Insurer

Clause 11 amends section 18H(2) to allow the Nominal Insurer to recover, by way of levy on approved insurers and exempt employers, amounts paid under the Principal Act, including administrative costs of the Nominal Insurer.

Provision of information to inspectors

Clause 12 amends section 23F to provide that a reference to an employer shall be taken to include a person whom an inspector believes, on reasonable grounds, is an employer.

Entry and inspection of premises

Clause 13 amends section 23G of the Principal Act to confer powers on an inspector to require certain persons on premises to supply an address and the registered name of the business carried out at the premises.

Notice by worker

Clause 14 inserts a new section 26BA into the Principal Act to require a worker receiving weekly compensation payments to give written notice to the employer if there is any changes in the circumstances that may affect the worker's entitlement to compensation

Infringement notices

Clause 15 inserts a new section 26G into the Principal Act that allows for the issuing of infringement notices and on-the-spot fines for certain prescribed offences

Section 26H allows inspectors to serve an infringement notices on person(s) whom the inspector believes have committed a prescribed offence.

Section 26J allows inspectors to issue a final infringement notice to a person where an infringement notice remains unpaid or when the person fails to apply for withdrawal of the infringement notice within 28 days after the infringement notice was served

Section 26K allows a person who has been served with an infringement notice or with a final infringement notice to be discharged of any liability for the prescribed offence if the relevant amounts are paid or the notice(s) withdrawn

Section 26L allows a person who has been served with an infringement notice to apply, in writing to the Registrar, for the withdrawal of the notice

Section 26M confers on the Registrar the power to withdraw a relevant infringement notice if satisfied, on reasonable grounds, that no offence has occurred, there was a reasonable excuse for committing the offence or if it would be unreasonable to prosecute for the commission of the offence

Section 26N prevents the Registrar from prosecuting within two weeks of serving a final infringement notice or if the person applies for withdrawal of the final infringement notice under Clause 26L. It allows a prosecution under the Act to proceed even if an infringement notice has not been issued for a prescribed offence. It also directs the Registrar to refund any amount paid, under Clauses 26H or 26J, in payment of the on-the-spot-fine if prosecution has been instituted after serving the infringement notice

Section 26P sets out guidelines for the Court, in sentencing an accused for any offence, to disregard the alleged commission, the circumstances and the investigation of any infringement notice offence

Section 26Q provides specific guidelines on the servicing of notices

Section 26R specifies that, unless the contrary is proved, the Registrar's signature shall be taken as such and that a certificate signed by the Registrar constitutes evidence of the matters stated in such certificate

Time for commencement of prosecutions

Clause 16 inserts a new section 26S into the Principal Act that allows for prosecution for the commission of an offence to commence within two years after the commission of the offence

Schedule 1

Clause 17 amends subparagraph 1B(c)(ii) of Schedule 1 to exclude income received in respect of engaging in a professional sporting activity from amounts that are compensable under the Act

It also amends Clause 11 of Schedule 1 to remove the obligation to obtain the consent of another party before the Registrar of the Court can refer to a medical referee a disputed medical report on a worker's condition or fitness for employment

Schedule 2

Clause 18 amends Part I of Schedule 2 by including the loss of sight in both or one eye in addition to the loss of one or both eyes

Schedule 3

Clause 19 amends condition 11 of Schedule 2 by replacing "one month" with "30 days"

Condition 13 is also amended to remove the necessity of obtaining Ministerial consent for cancellation of policy