

## EXPLANATORY MEMORANDUM

### WORKERS' COMPENSATION (AMENDMENT) BILL (NO. 2) 1996

#### General Outline

The Bill amends the *Workers' Compensation Act 1951* (the Act) to provide

workers' compensation coverage for any one worker under one insurance policy;

- determination of the worker's Territory or State for compensation purposes,
- that the existing coverage for an ACT worker who receives an injury anywhere in Australia, is extended to include work injuries received while out of Australia (this will bring the ACT into line with NSW and other jurisdictions); and

compensation for a worker injured in the ACT but who is not an ACT worker, and is not a worker of any other Territory or State or able to claim compensation outside Australia (this will bring the ACT into line with NSW and other jurisdictions).

#### Commencement

**Clause 2** provides for the commencement of the new provisions. Unlike other legislative commencements, a six month limit has not been included as the States and Territories have agreed through the HWCA that this legislation should commence on a common starting date. In this way any confusion in the application of the complementary legislation introduced by each jurisdiction will be avoided. The Minister will fix the commencement date by notice in the *Gazette*

## **Principal Act**

**Clause 3** defines “Principal Act” as the *Workers’ Compensation Act*”

## **Interpretation**

### **Clause 4 will**

- (a) amend the Act to define the term “worker of this Territory” by reference to new proposed s 7A, and
- (b) correct an anomaly in the Act by omitting subsections 6(8) and (10) which have had no application following the Act’s amendment by Act No 52 of 1995.

## **Cross Border Application of the Act**

**Clause 5** will amend the Act to provide for its application only to “workers of this Territory”. New s 7A sets out a procedure to determine which Territory or State is a worker’s “home” Territory or State for compensation purposes

This procedure is based on the nationally agreed policy that a worker should be compensated in the Territory or State where

- (a) the worker usually works (even if the worker is working interstate or overseas when injured under a temporary arrangement of no more than 6 month’s duration); or
- (b) the worker’s employer usually carries on business - (if paragraph (a) does not identify a single Territory or State), or

- (c) the worker was hired - (if paragraphs (a) and (b) do not identify a single Territory or State); or
- (d) the worker is injured - (if paragraphs (a), (b) and (c) do not identify a single Territory or State and the worker is not entitled to compensation under an overseas law).

### **Injuries Outside Australia**

**Clause 5** will also insert a new s.7B providing that compensation may be payable to a "worker of this Territory" even if the worker is injured while outside Australia

### **Limitation on Double Recovery**

**Clause 6** will insert a new s.23 to ensure that compensation is not recoverable in the ACT for an injury to the extent that the worker (or a dependant) has already obtained compensation interstate, or common law damages, in respect of that injury. In addition, it will reproduce the effect of existing s.23 by providing for an employer to recover the lesser of an amount of compensation or damages where both have been paid in respect of an injured worker. The existing s 23 provides for this by requiring the worker to repay the lesser amount to the employer

### **Consequential Amendments**

**Clause 7** indicates in (1) that the Principal Act is amended as set out in Schedule 1 and in (2) that Schedule 3 to the Principal Act is amended as set out in Schedule 2

### **Part III - Transitional**

#### **Interpretation**

**Clause 8** defines “commencement day” as the day fixed by the Minister under subsection 2 (2).

#### **Injuries Received Before Commencement**

**Clause 9** will ensure that the amendments effected by the Bill do not adversely affect the rights of a worker to compensation under the Act where the worker is injured before the date of commencement of the Bill

#### **Existing Insurance policies**

**Clause 10** will provide for the automatic “amendment” of prescribed workers’ compensation insurance policies to make the changes to the wording of these policies effected by cl 7 and Schedule 2 to the Bill.