

**1994**

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

**WORKERS' COMPENSATION (AMENDMENT) BILL 1994**

**EXPLANATORY MEMORANDUM**

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

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**WORKERS' COMPENSATION (AMENDMENT) BILL 1994**

This Bill makes a series of amendments to the Workers' Compensation Act 1951. The Bill provides for injured workers to be provided with occupational rehabilitation by their employer, introduces time limits for employers to commence weekly compensation payments to injured workers, and provides a mechanism for employers to terminate benefits to a worker when the employer's insurer considers the worker is no longer entitled to weekly compensation.

The Bill requires employers to provide a worker claiming compensation for an injury with occupational rehabilitation at the employer's expense unless the employer is of the opinion, based on reasonable grounds, that the worker is not entitled to compensation.

Employers will have an obligation to develop, and from time to time review, an occupational rehabilitation policy for their employees. When developing or reviewing the employer's occupational rehabilitation policy, the employer is required to consult with any health and safety committee established under the *Occupational Health and Safety Act 1989*, or if there is no such committee, with their own employees or their employees' union. The policy is required to be displayed in a conspicuous place for the employees to read.

There is a requirement that each employer appoint a person to be a rehabilitation coordinator for their employees and for the employer to display the name of that person in a conspicuous place for employees to read.

The Bill requires employers receiving a claim for weekly compensation from a worker to lodge that claim with their insurer within 7 days. This offence provision augments an existing workers' compensation insurance contractual requirement that employers lodge claims "forthwith" with insurers.

The existing common law requires that an employer must seek Court approval before the employer can unilaterally terminate weekly compensation payments to a worker who is in receipt of weekly compensation payments. The Bill does not change this requirement for situations where termination of the payments to a worker is sought more than 12 months after the worker has lodged the claim but formalises this position through a new provision which also includes a requirement that the worker be given eight weeks' notice of the termination.

The Bill provides employers with authority to terminate weekly compensation payments to workers who are no longer entitled to receive payments provided that eight weeks' notice of the termination is given and the termination action is taken within 12 months of the claim being lodged with the employer. When effecting such a termination, it is a requirement that the insurer have the opinion, based on reasonable grounds, that the worker is no longer entitled to receive the payments. The termination notice is required to be in an approved form and to advise the grounds for the insurer forming the opinion that the worker is no longer entitled to compensation.

There is provision for a worker, in respect to whom the employer has terminated benefits, to apply to the Court to have the weekly payments continued or, where payments have ceased, to have them recommenced. The Court has both a discretion to make interim orders for continuing weekly payments whilst the matter is being considered by the Court and a discretion to order complete or partial backpayment in cases where the application by the worker for restoration of benefits is successful.

Insurers are required to give a copy of each notice of termination of benefits to the Nominal Insurer.

Details of the Bill are as follows.

*Clause 1 and 2 and 3* are formal. They contain the short title, the commencement date and a short reference to the Principal Act.

*Clause 4* inserts two new definitions into the Principal Act whereby a reference to an "approved form" in the Act will refer to a form approved in writing by the Minister and a reference to an "employer's insurer" will refer to the insurer with whom the employer has their workers' compensation policy.

#### PART IIA - OCCUPATIONAL REHABILITATION

*Clause 5* inserts a new Part covering the provision of occupational rehabilitation to workers.

New section 15A defines "occupational rehabilitation". New subparagraph (b) of the two part definition is closely based upon the nationally accepted definition of "occupational rehabilitation" developed by Worksafe Australia. New subparagraph (a) of the definition brings within that definition of occupational rehabilitation the assessment of the occupational rehabilitation needs of the worker for the purposes of new subparagraph (b).

New subsection 15B(1) requires an employer to provide workers with occupational rehabilitation if they claim compensation for an injury. The employer need not provide occupational rehabilitation if they have reasonable grounds for believing that the worker is not entitled to compensation. The objective of this provision is to ensure that occupational rehabilitation is provided very early in the injury period to each injured worker because there is evidence that the early provision of occupational rehabilitation facilitates the early return to work of the worker with a consequent saving in compensation costs and personal trauma for the worker. The provision aims to achieve this objective by making the employer liable to provide occupational rehabilitation unless and until there are reasonable grounds for concluding that the worker is not entitled to compensation.

New subsection 15B(2) prevents the provision of occupational rehabilitation by an employer being taken as an admission of liability for workers' compensation. This provision recognises that occupational rehabilitation will often be provided by an employer to a worker at a time when the insurer has insufficient information to determine liability for the claim and that the provision of occupational rehabilitation must not prejudice subsequent rejection of the worker's claim.

New section 15C requires an employer to have an occupational rehabilitation policy. Subsection 15C(1) requires employers to develop an occupational rehabilitation policy for their employees and to review the policy so as to keep it up to date. Subsection 15C(2) specifies the time limit within which the policy must be developed. Subsection 15C(3) requires a copy of the policy to be displayed conspicuously so that employees can read the policy and be aware of its contents. Subsections 15C(4) and (5) require the employer to consult with any health and safety committee established under the *Occupational Health and Safety Act 1989* or, if no such committee has been established, with their employees or the union representing those employees.

New section 15D requires an employer to have a rehabilitation coordinator for their employees and to advise employees by notice of the name of the rehabilitation coordinator. Subsection 15D(1) contains the requirement for the employer to appoint a rehabilitation coordinator for their employees and to ensure that the appointment remains current and subsection 15D(2) requires the name of any person appointed to be conspicuously displayed by a notice to employees.

#### **PART VIA - WEEKLY COMPENSATION PAYMENTS**

*Clause 6* inserts new provisions aimed at ensuring that weekly compensation payments to injured workers commence within 28 days of their claim being lodged with their employer. The clause also provides a mechanism for employers to terminate benefits without the need to obtain prior Court approval and formalises the existing common law requirement to obtain Court approval for other terminations of weekly compensation payments.

New section 26A requires an employer to lodge claims for weekly compensation received from workers with the employer's insurer within seven days.

Schedule 3 of the Principal Act sets out the form of an Employer's Insurance Policy for workers' compensation and clause 2 of that prescribed policy requires that claims by workers be forwarded forthwith to the employer's insurer. However, in practice some employers have been tardy in providing claims to their insurer thereby delaying payment of weekly compensation payments to injured workers. In at least one instance an employer has refused to pass the claim to the insurer.

The new subsection creates an enforceable offence provision which can be used to compel employers to lodge claims with the employer's insurer. This requirement will facilitate both early payment of weekly compensation payments to injured workers and encourage early occupational rehabilitation.

New section 26B has the objective of ensuring that weekly compensation payments to a worker commence within 28 days of the worker lodging their claim with the employer. The provision acknowledges the role of the employer's insurer in directing whether the claim should be paid and does not require payment where the claim is rejected by written notice to the worker. Taken in conjunction with the new section 26A, the provision gives the employer's insurer a maximum period of between 21 and 28 days to determine whether the worker is entitled to compensation.

New provision 26C gives employers authority to terminate weekly compensation payments to workers within the first year of the claim. The section is intended to overrule a legal decision known as *Barbaro's Case* (*Barbaro vs Leighton Contractors Pty. Ltd.* (1980) 30 A.L.R. 123) which prevents an insurer unilaterally terminating weekly compensation payments to a worker without Court approval.

New subsection 26C(1) provides an employer with authority to terminate weekly compensation payments to a worker within 12 months of the day on which the claim was lodged where the employer's insurer has the opinion based on reasonable grounds that the worker is no longer entitled to receive the payments. This subsection will be used by insurers acting on behalf of the employer whom they have insured for workers' compensation to terminate payments in circumstances where the information they have collected leads them to a reasonable belief that the worker is no longer incapacitated for work or that the injury did not result from their employment.

New subsection 26C(2) requires that the notice of termination under subsection 26C(1) must be in approved form and requires that it specify :-

- the day the termination is to take effect, being a day not less than 8 weeks after the date of the notice;
- the grounds for the insurer's opinion that the worker is not entitled to weekly payments; and
- the options available to the worker to have the decision reviewed.

New section 26D provides a worker receiving a notice under section 26C with a right to have the termination reviewed and empowers the Court to make orders about weekly payments and for additional payments in substitution for weekly payments which have been discontinued. New subsection 26D(1) gives a worker receiving a notice under subsection 26C a right to apply to the Court for weekly payments to continue or recommence. New subsection 26D(2) empowers the Court to determine whether the worker is entitled to receive the payments and to make orders for weekly payments to continue or recommence.

New subsection 26D(3) empowers the Court, in the case where it has ordered that weekly payments recommence, to order that additional payments be made to the worker to compensate for the loss of weekly payments during the period they were discontinued. The subsection limits the compensation to the amount which would otherwise have been received if weekly payments had not been stopped.

New subsection 26D(4) empowers the Court to make interim orders for the continuation of benefits whilst a final decision is pending.

New section 26E formalises much of the existing position at law position which requires employers to obtain Court approval to terminate weekly payments. The section when read in conjunction with section 26C provides the mechanism for terminating benefits where the termination is occurring 12 months after the worker has lodged a claim with their employer for weekly compensation payments. The requirement to obtain Court approval to terminate benefits for workers who are receiving weekly compensation payments more than 12 months after first lodging a claim with their employer is aimed at providing greater protection from arbitrary termination for these more seriously injured workers.

New subsection 26E(1) enables the employer to apply to the Court to obtain authority to have weekly compensation payments to a worker terminated. New subsection 26E(2) requires the employer to notify the worker of the application.

New subsection 26E(3) enables the Court to order the termination of weekly compensation payments to a worker where the Court is satisfied that the worker is not entitled to the payments and requires that the order specify a day on which the termination is to occur. New subsection 26E(4) provides that the date specified for the termination of benefits under section 26E(3) is to be a day not less than 8 weeks after the day on which the employer gave notice to the worker under subsection 26E(2).

New section 26F requires that a copy of any notice to terminate benefits under section 26C or section 26E(2) is to be given to the nominal insurer. This provision has been inserted to enable the Government to monitor the effectiveness and consequences of the new termination provisions.

*Clause 7* amends section 28 of the Principal Act to extend the regulation making power under the Act to include a power to regulate the form of any medical certificate required for the purposes of the Act, the regulations, or the Rules. This will enable regulations to be made requiring the use of a standard form of medical certificate which is being developed for national use.

*Clause 8* is a consequential amendment to clause 12 of Schedule 1 of the Act which is necessary because of the insertion of new sections 26C and 26E.

*Clause 9* is a transitional provision which suspends the operation of new Part VIA in respect to workers already receiving weekly compensation payments. This prevents the new termination provisions enabling termination without Court approval from applying to workers receiving benefits at the time when the Act comes into force.