

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY

WORKERS COMPENSATION
AMENDMENT BILL 1999

EXPLANATORY MEMORANDUM

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Independent

Outline

This Bill establishes criminal offences and provides penalties for deliberate evasion of payment of premiums and/or the understating of wages in order to lessen the payment of premiums.

The current provisions relating to insurance and premiums are contained in Part III of the *Workers Compensation Act 1951*.

Section 17B requires an employer to maintain a prescribed insurance policy in force with an approved insurer. Failure to comply makes the offender liable to a penalty. Those penalties are:

For a natural person - 50 penalty units; and
For a body corporate - 250 penalty units.

Subsection 17 (5) allows the nominal insurer to recover as a debt twice the amount which would have been payable.

Section 18 requires that an employer give to an insurer a certificate from a registered auditor and a statutory declaration setting out the categories of workers and the total amount of wages paid in respect of those workers. Failure to comply makes the offender liable to a penalty. Those penalties are:

For a natural person - 50 penalty units; and
For a body corporate - 250 penalty units.

If a person knowingly makes a false statutory declaration that person has committed an offence under section 11 of the *Statutory Declarations Act 1959* of the Commonwealth and is liable for imprisonment for four years. Subsection 4B(2) of the *Crimes Act 1914* of the Commonwealth converts this into a possible pecuniary penalty of 240 penalty units.

If an auditor makes a false claim in a certificate for the purposes of this Act they are liable for imprisonment for six months or a fine of 50 penalty units, or both.

Under section 345 of the *Crimes Act 1900*:

"A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to the commission of an offence under the law of the Territory shall be deemed to have committed that offence and shall be punishable, on conviction, accordingly."

A similar provision exists in section 5 of the *Crimes Act 1914* of the Commonwealth.

A penalty unit is defined in Section 33AA of the *Interpretation Act 1967*.

Clause Notes

Clauses 1 and 2 refer to the long title of the Bill and commencement of the Act.

Clause 3 - establishes second and subsequent offences and penalties for a person and/or body corporate who fails to maintain a prescribed insurance policy with an approved insurer. Further, the offence is extended to a director or officer who knowingly participates in the failure to maintain such an insurance policy.

In addition, where an employer has contravened the requirement to maintain their insurance obligations provision is made to increase the amount recoverable by the nominal insurer from two times the amount of premiums payable to three times the amount.

Clause 4 - establishes second and subsequent offences and penalties for a person and/or body corporate who fails to provide an insurer a certificate from a registered auditor and provide a statutory declaration setting out the categories of workers and the total amount of wages paid in respect of those workers.

Clause 5 - inserts three additional subsections into section 18. The new sections establish offences and penalties for a person and/or body corporate who knowingly participates in providing false information in a statutory declaration. Further, they are banned from employing staff for a period of five years from the date of conviction.

Clause 6 - provides for a nominal insurer who incurs a liability from an employer under the Act to recover three times the amount of the debt payable.