

2017

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

WORKERS COMPENSATION AMENDMENT BILL 2017

EXPLANATORY STATEMENT

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Purpose of the Bill

The *Workers Compensation Act 1951* (the Act) establishes the regulatory framework for the Territory's workers' compensation scheme (the Scheme).

The purpose of the Scheme is to establish a statutory safety net of compensation and support for private sector workers in the event of injury, ensuring that they have access to services such as medical treatment, rehabilitation assistance, weekly compensation and lump sum compensation.

Death Entitlements

In the unfortunate case of a work related death, the Scheme provides access to weekly compensation and lump sum compensation for dependant family members, as well as funeral costs.

The amount of monetary compensation available in these circumstances is low by comparison with other Australian jurisdictions.

These reforms, in some instances, will more than double current death entitlements bringing them to a level consistent with the Commonwealth's Comcare scheme. Aligning death entitlements with the Comcare scheme creates equity for the families of ACT private and public sector workers.

Weekly payments

The Australian Government is incrementally increasing the qualifying age for the age pension from 65 to 67 years between 2017 and 2023. Currently, the ACT workers' compensation laws provide that workers injured before their 63rd birthday are not entitled to weekly compensation payments once they reach age 65.

From 1 July 2017, the qualifying age for the pension increased to 65.5 years.

Reforms to weekly benefit eligibility align the workers' compensation laws with the Commonwealth age pension age, ensuring that injured workers can transition from weekly compensation to the age pension without any gap in income. These changes are retrospective and commence 1 July 2017.

Employment-related diseases

Most Australian jurisdictions have a Deemed Diseases List which prescribes a list of diseases which are generally accepted as being work related. The intent of this list is to reverse the onus of proof for an injured worker who has contracted a prescribed disease, making it easier for them to access workers' compensation entitlements.

Schedule 1 of the *Workers Compensation Regulation 2002* lists 28 diseases that are currently deemed to be employment-related in the ACT. This list is out of date and does not include a number of diseases that are now widely accepted to be primarily caused by work.

In August 2015 Safe Work Australia published an updated list of Deemed Diseases, which was based on expert research and agreed by a tripartite national committee. Adopting the Safe Work Australia list of deemed diseases will modernise the ACT scheme. The updated list expands the number of deemed diseases from 28 to 48.

Failure to pay an injured worker

The reform introduces a penalty provision against an employer who fails to pay a worker weekly compensation after being provided with notice of a work-related injury. This will encourage compliance with the legislation and protect worker rights.

As set out in detail below, the Bill will:

- modernise the schedule of employment-related diseases;
- consistently define the test for employment relatedness throughout the Act;
- increase statutory death entitlements to align with the Commonwealth's Com-care workers' compensation scheme;
- align the age restriction for accessing weekly incapacity payments with the Commonwealth pension age; and
- introduce a penalty for employers who refuse to pay weekly compensation to injured workers.

Human Rights Considerations

Protection of the family and children (section 11 of the Human Rights Act)

The Bill supports the protection of the family and children in accordance with section 11 of the *Human Rights Act 2004* which states that family and every child has the right to protection without distinction or discrimination of any kind.

The improved enforcement of workers compensation payments (clause 6), and the increase in death benefits to families and children (clause 9) protect families and children by helping to ensure they will receive appropriate financial support in the event of workplace injury or death.

Rights in criminal proceedings (section 22(1) of the Human Rights Act)

Clause 6 of the Bill introduces a new strict liability offence where an employer has been notified of the requirement to begin the payment of workers compensation to a worker, and fails to comply with that requirement.

This introduction of the offence is a tool to be used in situations where an employer simply refuses to pay, or in the case of repeat offenders. WorkSafe ACT will consult and educate employers prior to consideration of issuing a penalty notice.

The determining question of whether or not payments have been made is straightforward and the offence will only be applied in circumstances where the employer has been notified of the need to make the payment.

The maximum penalty is 10 penalty units.

The offence is introduced to protect the rights of the injured worker and their family by ensuring financial continuity.

Recognition and equality before the law (section 8 of the Human Rights Act)

Clause 2 of the Bill provides that sections 5, 7 and 8 are taken to have commenced on 1 July 2017.

Clause 2 aims to ensure that injured workers can transition from weekly compensation to the age pension without any gap in income. No worker will be worse off under the amendments, but will rather have either an identical or better outcome under the retrospective provisions.

Clause 2 therefore supports the right to recognition and equality before the law, by removing what otherwise would be a prejudicial situation for people who happen to be a certain age at a certain time.

Climate Change Vulnerability Assessment

The measures contained in the Bill have negligible climate change effects.

OUTLINE OF THE PROVISION OF THE BILL

DETAIL

Clause 1 — Name of Act

This clause provides that the name of the Act is the *Workers Compensation Amendment Act 2017*.

Clause 2— Commencement

- (1) Sections 5, 7 and 8 are taken to have commenced on 1 July 2017.
- (2) The remaining provisions commence on the day after this Act's notification day.

Clause 3— Legislation amended

This clause provides that the Act amends the *Workers Compensation Act 1951*, the *Workers Compensation Regulation 2002* and the *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*.

Workers Compensation Act 1951

Clause 4 – Employment-related diseases Section 28

Clause 4 inserts the word “substantial” before “contributing” in section 28. This is a technical amendment to remove any ambiguity and ensure the application of this section is consistent with its intent.

This amendment clarifies that where a worker contracts a disease specified by regulation the worker is taken to have satisfied the threshold that employment was a substantial contributing factor to the disease – unless the contrary is established.

Clause 5 – Definitions Section 36G (1)

Clause 5 inserts a new definition in section 36G (1). The definition of *pension age* has been included to support the amendments to sections 39 and 40.

Clause 6 - When do weekly compensation payments begin etc? New Section 38 (4) and (5)

Clause 6 inserts new sections 38 (4) and (5) which provides that it is an offence for an employer to fail to commence payments of weekly compensation to a worker upon notice of an injury. The maximum penalty is 10 penalty units.

Clause 7 - Entitlements to weekly compensation for first 26 weeks of incapacity Section 39 (3) (b) and (c)

Clause 7 allows injured workers with a continuing incapacity to work to receive payments of weekly compensation until they reach pension age.

To ensure the date of effect for this provision aligns to the Commonwealth's increase in the pension age, this clause will apply retrospectively from 1 July 2017.

**Clause 8 - Entitlements to weekly compensation for first 26 weeks of incapacity
Section 40 (3) (b) and (c)**

Clause 7 allows an injured worker to continue to receive payments of weekly compensation until they reach pension age, provided they have a continuing compensable incapacity to work.

To ensure the date of effect for this provisions aligns to the Commonwealth's increase in the pension age this clause will be retrospective to 1 July 2017.

**Clause 9 – Death Benefits
Section 77 (2) (a) and (b)**

Clause 9 increases the single lump sum payment to dependents. It also increases the weekly compensation payable to a dependent child.

These benefits will be adjusted in accordance with the Wage Price Index (WPI).

**Clause 10 – Death Benefits
Section 77 (2) (c) and (6)**

Clause 10 increases funeral costs in recognition of the contemporary cost of funerals.

The funeral costs will continue to be adjusted in accordance with the Consumer Price Index (CPI).

**Clause 11 – Definitions
New section 77 (7)**

New section 77 (7) provides a definition of the Wage Price Index (WPI) for the purpose of adjusting the single lump sum payment to dependant and the weekly compensation payable to a dependant child.

Workers Compensation Regulation 2002

Clause 12 – Schedule 1

Clause 12 inserts an updated list of employment related diseases. This new Schedule 1 modernises the deemed diseases list consistent with current scientific evidence. The new list is based on the Safe Work Australia, *Deemed Diseases in Australia* report published in August 2015.

Two diseases were removed from the current list - ankylostomiasis and tenosynovitis, in accordance with contemporary medical evidence on their work relatedness.

A number of diseases have been added or amalgamated to equate to the final number.

Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006

Schedule 1

This new table replaces the current table to align with the contemporary value of penalty units.