

Workplace Injury Management and Workers Compensation Act 1998

As in force at 20 December 2002

Long Title

An Act to provide for the effective management of work-related injuries and injury compensation for workers in respect of such injuries; and for other purposes.

Chapter 1 - Preliminary

1 Name of Act

This Act is the *Workplace Injury Management and Workers Compensation Act 1998* .

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 System objectives

The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives:

- (a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
- (b) to provide:
 - _ prompt treatment of injuries, and
 - _ effective and proactive management of injuries, and
 - _ necessary medical and vocational rehabilitation following injuries,in order to assist injured workers and to promote their return to work as soon as possible,
- (c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,
- (d) to be fair, affordable, and financially viable,
- (e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,
- (f) to deliver the above objectives efficiently and effectively.

4 Definitions

(cf 1987 s 3; 1989 s 3)

(1) In this Act:

approved medical specialist has the meaning given by section 319.

Arbitrator means an Arbitrator of the Commission appointed under this Act.

Authority means the WorkCover Authority of New South Wales constituted under this Act.

Board of Directors means the Board of Directors of the Authority.

claim means a claim for compensation or work injury damages that a person has made or is entitled to make.

claimant means a person who makes or is entitled to make a claim.

Commission means the Workers Compensation Commission of New South Wales established by this Act.

compensation means compensation under the Workers Compensation Acts, and includes any monetary benefit under those Acts.

Compensation Court means the Compensation Court of New South Wales constituted under the *Compensation Court Act 1984* .

Council means the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales constituted under this Act.

de facto relationship means the relationship between two unrelated adult persons:

- (a) who have a mutual commitment to a shared life, and
- (b) whose relationship is genuine and continuing, and
- (c) who live together,

and who are not married to one another.

death benefit compensation means compensation under Division 1 (Compensation payable on death) of Part 3 of the 1987 Act.

dependants of a worker means such of the members of the worker_s family as were wholly or in part dependent for support on the worker at the time of the worker_s death, or would but for the incapacity due to the injury have been so dependent, and includes:

- (a) a person so dependent to whom the worker stands in the place of a parent or a person so dependent who stands in the place of a parent to the worker, and
- (b) a divorced spouse of the worker so dependent, and
- (c) a person so dependent who:
 - (i) in relation to an injury received before the commencement of Schedule 7 to the *Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998* _although not legally married to the worker, lived with the worker as the worker_s husband or wife on a permanent and genuine domestic basis, or
 - (ii) in relation to an injury received after that commencement_is the other party to a de facto relationship with the worker.

Deputy President means a Deputy President of the Commission.

doctor means a medical practitioner.

dust disease has the same meaning as it has in the *Workers_ Compensation (Dust Diseases) Act 1942* .

employer includes:

- (a) the legal personal representative of a deceased employer, or

- (b) a government employer, or
- (c) a former employer.

Without limiting the meaning of the expression, an employer can be an individual, a corporation, a firm, an unincorporated body of persons, a government agency or the Crown.

exercise a function includes perform a duty.

existing claim has the same meaning as in Chapter 7 (New claims procedures).

existing claim matter has the same meaning as in Chapter 7 (New claims procedures).

financial year means a year commencing 1 July.

former 1926 Act means the *Workers_ Compensation Act 1926* .

former licensed insurer means a person (not being a licensed insurer) who:

- (a) was previously a licensed insurer under this Act, the 1987 Act or section 27 of the former 1926 Act, and
- (b) continues to have liabilities under policies of insurance previously issued or renewed by the person.

function includes a power, authority or duty.

General Manager means the General Manager of the Authority.

government agency means any department, person or body exercising executive or administrative functions on behalf of the Government.

government employer means the Crown or any government agency, and includes:

- (a) a public health organisation within the meaning of the *Health Services Act 1997* , and
- (b) an employer prescribed by the regulations.

government worker means a worker whose employer is a government employer.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

incapacity includes a disfigurement that is sufficient to affect the earning capacity of a worker or a worker_s opportunities for employment.

injury :

- (a) means a personal injury arising out of or in the course of employment, and
- (b) includes:
 - (i) a disease contracted by a worker in the course of employment, where the employment was a contributing factor to the disease, or
 - (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor to the aggravation, acceleration, exacerbation or deterioration, but
- (c) does not include (except in the case of a worker employed in or about a mine

to which the *Coal Mines Regulation Act 1982* applies):

- (i) a dust disease, or
- (ii) the aggravation, acceleration, exacerbation or deterioration of a dust disease.

insurance includes indemnity.

Insurance Ministerial Corporation means the NSW Insurance Ministerial Corporation constituted under the *Government Insurance Office (Privatisation) Act 1991*.

lump sum compensation means compensation under Division 4 (Compensation for non-economic loss) of Part 3 of the 1987 Act.

mediator means a person appointed as a mediator under section 318F.

medical assessment means assessment of a medical dispute by an approved medical specialist under Part 7 of Chapter 7.

medical certificate means a certificate given by a medical practitioner.

medical dispute has the meaning given by section 319.

medical expenses compensation means compensation under Division 3 (Compensation for medical, hospital and rehabilitation expenses etc) of Part 3 of the 1987 Act.

member of a family means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister.

motor accident damages means damages to which Part 6 of the *Motor Accidents Act 1988* or Chapter 5 of the *Motor Accidents Compensation Act 1999* applies.

new claim has the same meaning as in Chapter 7 (New claims procedures).

new claim matter has the same meaning as in Chapter 7 (New claims procedures).

occupational health and safety legislation means:

- (a) the *Occupational Health and Safety Act 2000* and the instruments under that Act, or
- (b) the associated occupational health and safety legislation within the meaning of that Act, or
- (c) any other Act or instrument (or part) prescribed by the regulations.

pain and suffering compensation means compensation for pain and suffering under section 67 of the 1987 Act.

permanent impairment compensation means compensation for permanent impairment under section 66 of the 1987 Act.

policy of insurance means a policy of insurance that an employer obtains under the 1987 Act or the former 1926 Act.

premium income :

(a) in relation to contributions payable under this Act or the 1987 Act by an insurer (other than a specialised insurer) in respect of a financial year_means the amount the insurer receives during that financial year as premiums in respect of policies of insurance issued or renewed by the insurer (whether the policies are issued or renewed during that financial year or during a previous financial year), or

(b) in relation to contributions payable under this Act or the 1987 Act by a specialised insurer in respect of a financial year_means the amount the insurer receives, whether during or after that financial year, as premiums in respect of policies of insurance issued or renewed by the insurer during that financial year, and, in relation to contributions payable by any insurer, includes any amount comprising or attributable to GST and any amount prescribed by the regulations as included for the purposes of this definition in relation to that financial year, but does not include any amount prescribed by the regulations as excluded for the purposes of this definition in relation to that financial year.

President means the President of the Commission.

Presidential member means the President or a Deputy President.

records includes books, accounts, minutes, registers, deeds, documents and any other sources of information compiled, recorded or stored in written form, on microfilm, by electronic process or in any other manner.

Registrar means the Registrar of the Commission appointed under this Act.

related body corporate has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

Rules means the Rules of the Commission made by the Minister under this Act.

spouse of a person means:

- (a) in relation to an injury received before the commencement of Schedule 7 to the *Workers Compensation Legislation Amendment (Dust Diseases and Other Matters) Act 1998* _a husband or wife of the person, or
- (b) in relation to an injury received after that commencement:
 - (i) a husband or wife of the person, or
 - (ii) the other party to a de facto relationship with the person.

the 1987 Act means the *Workers Compensation Act 1987* .

Uninsured Liability and Indemnity Scheme means the scheme established under Division 6 of Part 4 of the 1987 Act.

weekly payment , in relation to compensation, means a weekly payment of compensation under Division 2 of Part 3 of the 1987 Act in respect of a period of total or partial incapacity for work.

work injury means an injury in respect of which compensation is payable.

work injury damages has the same meaning as in Chapter 7 (New claims procedures).