

Accident Compensation (Further Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 outlines the purpose of the Bill.
- Clause 2 details the commencement of the provisions of the Bill.

PART 2—ACCIDENT COMPENSATION ACT 1985

- Clause 3 defines the **Accident Compensation Act 1985** as the Principal Act for the purposes of Part 2.
- Clause 4 amends section 5(1) of the **Accident Compensation Act 1985** which contains definitions for the purposes of the Act.

Sub-clause (1) extends the definition of "medical question" to include a question whether a proposal for a co-ordinated care program, which is provided for in the amendments made by clause 17, should be approved, whether an alteration of such a program should be approved or whether such a program should be cancelled.

Sub-clause (2) amends the definition of "notional earnings" to exclude from the definition an amount paid to a worker by the Authority in respect of an employment programme provided or arranged by the Authority for the purposes of the Act.

- Clause 5 amends section 21(10) of the **Accident Compensation Act 1985** to make it clear that a delegation of any power, function, authority or discretion to which section 14 of the **Dangerous Goods Act 1985** applies may be made to a Director of the Board of Management of the Victorian WorkCover Authority appointed under section 25 or 26 of the **Accident Compensation Act 1985**.
- Clause 6 amends section 33A(7) of the **Accident Compensation Act 1985** to extend the permissible uses to which contributions by self-insurers may be put.
- Clause 7 amends section 50 of the **Accident Compensation Act 1985** relating to costs.

Sub-clauses (1) and (3) make amendments which are intended to make it clear that all of the provisions of section 50 apply despite anything to the contrary in any other Act or law.

Sub-clause (2) amends section 50(4) to ensure that, when proceedings issued by a worker or claimant in the County Court are settled or compromised, and the outcome achieved by the settlement or compromise could have been achieved by a decision or judgment in the Magistrates' Court, under no circumstances can the worker or claimant recover from, or have costs awarded against, the other party or parties to the proceedings in excess of the costs which could have been awarded if the scale of costs applicable in the Magistrates' Court applied.

Clause 8 amends section 63(5) of the **Accident Compensation Act 1985** to make it clear that an examination of a worker by a medical practitioner in his or her capacity as a member of a Medical Panel does not prevent that practitioner from thereafter being a member of a Medical Panel examining the worker.

Clause 9 inserts new section 91 into the **Accident Compensation Act 1985**.

New section 91(1) provides that, in Part IV of the Act, a reference to the assessment of a degree of impairment in accordance with that section is a reference to an assessment made in accordance with—

- unless regulations prescribing methods for the purposes of the section are in force, the American Medical Association's Guides to the Evaluation of Permanent Impairment (Second Edition); or
- methods prescribed for the purposes of the section.

This sub-section also has the effect of requiring that such an assessment must be made in accordance with any operational guidelines as to the use of the Guides or prescribed methods issued by the Minister and by a medical practitioner who has successfully completed any training course approved by the Minister in the application of the Guides or the prescribed methods.

New section 91(2) provides that in assessing a degree of impairment under section 91(1), regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury.

Clause 10 amends the provisions of section 93B (1) and (2) of the **Accident Compensation Act 1985** relating to the calculation of, and the preconditions to continued entitlement to, weekly payments in the case of seriously injured workers.

Sub-clause (1) inserts a new paragraph (a) into section 93B(1) which incorporates the notional earnings test into the calculation of weekly payments for a worker with a serious injury.

Sub-clause (2) amends section 93B (2) so as to impose on workers who are seriously injured, in order to maintain an entitlement to weekly payments, an obligation to make every reasonable effort to participate in an occupational rehabilitation service or return to work plan, to make every reasonable effort to return to work in suitable employment and to participate in assessments of the worker's incapacity, rehabilitation progress and future employment prospects, when requested to do so. These obligations are the same as are currently imposed on workers who are totally incapacitated.

- Clause 11 makes amendments to sections 93B(5), paragraph (e) in the Table to 98(1) and 135A(3) of the **Accident Compensation Act 1985** so as to require that an assessment of a degree of impairment referred to in those provisions must be made in accordance with the new section 91. The clause also includes transitional provisions in accordance with which, section 98 as amended by the clause applies in respect of claims for compensation under that section made on or after the date of commencement of the clause and section 135A as amended by the clause applies in respect of proceedings commenced on or after that commencement. Clause 2(3) of the Bill provides that Clause 11 comes into operation on 14 November 1996.
- Clause 12 inserts a new sub-section (2) in section 93DA of the **Accident Compensation Act 1985** which will govern the application of paragraph (b) of the definition of "notional earnings" in the calculation of the weekly payments of a worker with a serious injury.
- Clause 13 amends section 96 of the **Accident Compensation Act 1985** so as to restrict the application of that section to pensions, payments or lump sum amounts which relate to the worker's retirement from, or the cessation or termination of, (as is applicable) the employment out of, or in the course of which, or due to the nature of which, the injury arose.
- Clause 14 inserts new section 98B in the **Accident Compensation Act 1985** which requires that certain payments under sections 98 and 98A of the Act must be paid by 60 equal instalments in accordance with the section.
- Clause 15 amends section 99 of the **Accident Compensation Act 1985** relating to compensation for medical and like services, so as to provide for the making of an Order of the Governor in Council, on the recommendation of the Victorian WorkCover Authority, which specifies the maximum amount, or a method in

accordance with which such a maximum amount may be calculated, which may be paid as compensation under that section in respect a service or burial or cremation.

The clause also amends section 99(2A) so as to clarify how any guidelines issued by the Authority for the purposes of sub-section (2) of the section are to apply.

- Clause 16 inserts new section 99(3A) of the **Accident Compensation Act 1985** which provides that a worker shall be entitled to receive an occupational rehabilitation service from a provider approved by the Authority offered or provided by the Authority, employer, authorised insurer or self-insurer or, if the Authority, employer, authorised insurer or self-insurer does not so offer, from a provider approved by the Authority of the worker's choice.
- Clause 17 inserts new section 99AAA in the **Accident Compensation Act 1985** which provides for the preparation and approval of proposals for co-ordinated care programs for the purpose of co-ordinating and managing the provision of compensable medical and like services to workers.
- Clause 18 makes amendments to sections 39, 41 and 99AA of the **Accident Compensation Act 1985**, consequential on the insertion of section 99AAA, which have the effect of ensuring that disputes in relation to decisions made under section 99AAA are dealt with in the same way as disputes in relation to decisions made under section 99.
- Clause 19 amends section 100 of the **Accident Compensation Act 1985** to exclude an amount of an instalment under new section 98B from indexation under that section.
- Clause 20 amends section 104A of the **Accident Compensation Act 1985** to provide for the issuing of directions for or with respect to procedures for the determination of claims for compensation under sections 98 or 98A of the Act. The effect of the amendment is to extend the scope of section 104A to ensure that directions under the section are not limited to situations when a dispute in relation to the claim is already in existence.
- Clause 21 inserts new Division 10 in Part IV of the **Accident Compensation Act 1985**.

The new Division empowers an authorised insurer, in accordance with any guidelines issued by the Authority, to enter into a written arrangement with an employer under which the authorised insurer appoints the employer as its agent in relation to the carrying out of specified functions and powers of the authorised insurer under specified provisions of the Act. The Victorian

WorkCover Authority has the power to vary or revoke a delegation and to determine that an authorised insurer may not enter into such arrangements.

Clause 22 amends section 138 (3)(b) of the **Accident Compensation Act 1985** to clarify the calculation of the amount a third party is liable to pay as indemnity to the Authority, authorised insurer, self-insurer or employer under the section.

Clause 23 amends sections 141, 141A and 142B of the **Accident Compensation Act 1985**.

Sub-clause (1) substitutes a new sub-section (2) in section 141 of the Act which replaces the formal requirements for an application for approval as a self-insurer with a requirement that the applicant must satisfy prescribed minimum requirements as to financial strength and viability.

Sub-clauses (2), (3) and (4) make consequential amendments to sections 141 of the Act and similar amendments to sections 141A and 142B of the Act.

Clause 24 amends sections 142, 142A, 142C, 144, 148, 149 and 151 of the **Accident Compensation Act 1985** to confer on the Authority, rather than the Minister, the power to approve, and revoke the approval of, self-insurers and make consequential amendments to support this amendment.

Clause 25 amends sections 155(1), 242A, 243(1) and 244(1), relating to confidentiality and unauthorised use of information, to increase the applicable penalties from 10 penalty units to 100 penalty units.

Clause 26 inserts new Part VIIA in the **Accident Compensation Act 1985**.

The new Part prohibits and governs a range of conduct and rights of agents within the meaning of the Part, and other persons, in connection with claims for compensation under section 98 of the Act for loss of hearing and any other class of claim which is prescribed by regulation.

Clause 27 amends section 240A(1) of the **Accident Compensation Act 1985** to clarify that a warrant under that section may be issued in respect past as well as current alleged contraventions of the **Accident Compensation Act 1985** and the **Accident Compensation (WorkCover Insurance) Act 1993**.

Clause 28 amends section 243 of the **Accident Compensation Act 1985**, the secrecy provisions, to provide an exception to the general prohibition on release of documents and information in respect of a medical practitioner nominated or appointed under section 99AAA of the Act to prepare a proposal for a co-ordinated care program.

- Clause 29 amends section 252 of the **Accident Compensation Act 1985** to provide for the institution of prosecutions in respect breaches of any provision of new Part VIIA of the Act.
- Clause 30 amends section 63(1)(d) of the **Accident Compensation (WorkCover) Act 1992** and section 85(9) of the **Constitution Act 1975** consequential on the amendments to section 135A of the **Accident Compensation Act 1985** contained in clause 11.

PART 3—AMENDMENT OF OTHER ACTS

- Clause 31 substitutes a new section 18 in the **Accident Compensation (WorkCover Insurance) Act 1993** relating to the provision by employers of estimates of rateable remuneration.
- Clause 32 inserts new section 22A in the **Accident Compensation (WorkCover Insurance) Act 1993** which provides that where an arrangement has been entered into by an authorised insurer and an employer under new Division 10 of the **Accident Compensation Act 1985**, the authorised insurer may, in accordance with guidelines issued by the Authority, reduce the premium payable by the employer by an amount not exceeding the amount, or an amount calculated by a method, determined by the Victorian WorkCover Authority.
- Clause 33 inserts new section (2)(4) in the **Accident Compensation (Occupational Health and Safety) Act 1996** to clarify the date of commencement of certain provisions of that Act.
- Clause 34 substitutes a new definition of "reasonable" in section 3(1) of the **Transport Accident Act 1986** so as to provide a similar mechanism for setting maximum amounts of compensation for medical and like benefits as is introduced into the **Accident Compensation Act 1985** by clause 15.
- Clause 35 inserts new section 46B in the **Transport Accident Act 1986** which provides that in determining a degree of impairment of a person, regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury.