



**WORKERS REHABILITATION AND COMPENSATION
(MISCELLANEOUS) AMENDMENT ACT 1995**

No. 56 of 1995

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A.D. 1995

No. 56 of 1995

An Act to amend the Workers Rehabilitation and Compensation Act 1986 and to insert further transitional provisions in the Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1995.

[Assented to 3 August 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Workers Rehabilitation and Compensation (Miscellaneous) Amendment Act 1995*.

(2) The *Workers Rehabilitation and Compensation Act 1986* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Insertion of s. 38A

3. (1) The following section is inserted in the principal Act after section 38:

Discontinuance or reduction of weekly payments because of passage of time

38A. (1) If a worker's entitlement to weekly payments ceases or reduces because of the passage of time, the Corporation may (without proceeding to a review of the worker's entitlement) discontinue or reduce the weekly payments to reflect the cessation or reduction of the entitlement.

Examples—

- The Corporation may, for example, discontinue weekly payments to the worker under this section when the worker reaches that age at which the worker ceases to be entitled to weekly payments under section 35(5);
- The Corporation may, for example, reduce the amount of a worker's weekly payments under this section because the amount to which the worker is entitled has automatically diminished under section 35(1)(b) at the end of the first year of incapacity.

(2) On discontinuing or reducing weekly payments under this section, the Corporation must give notice, in the prescribed form, of the discontinuance or reduction and the reasons for it to—

- (a) the worker; and
- (b) the employer from whose employment the compensable disability arose.

(2) A discontinuance or reduction of weekly payments made under the principal Act before the commencement of this section cannot be challenged on the ground that there was no antecedent review of the worker's entitlement if the discontinuance or reduction could, assuming that section 38A had then been in force, have been validly made under that section.

(3) Subsection (2) does not affect rights of the respondent arising under the judgment of the Supreme Court in *Mitsubishi Motors Australia Ltd and WorkCover v Frank Sosa* (No. S5084).

Amendment of s. 39—Economic adjustments to weekly payments

4. Section 39 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) An adjustment under this section—

- (a) must be based on—
 - (i) changes in the rates of remuneration payable to workers generally or to workers engaged in the kind of employment from which the worker's disability arose; or
 - (ii) if the worker applies, in accordance with the regulations, for the adjustment to be made on the basis of changes in rates of remuneration prescribed by an award or enterprise agreement payable to a group of workers of which the worker was a member at the time of the occurrence of the disability—changes in those rates of remuneration; and
- (b) operates from the end of the year of incapacity in which the review is made.

Amendment of s. 42—Redemption of liabilities

5. Section 42 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) Any of the following liabilities may, by agreement between the worker and the Corporation, be redeemed by a capital payment to the worker—

- (a) a liability to make weekly payments;
- (b) a liability to pay compensation for medical expenses of the kind referred to in section 32;
- (c) a liability to make a capital payment for loss of future earning capacity.

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Amendment of s. 42A—Loss of earning capacity

6. Section 42A of the principal Act is amended by striking out paragraph (c) of subsection (3) and substituting the following paragraphs:

- (c) the following factors must be considered (and given fair and reasonable weight) in assessing what employment is suitable for a partially incapacitated worker—
 - (i) the nature and extent of the worker's disability; and
 - (ii) the worker's age, level of education and skills; and
 - (iii) the worker's experience in employment; and
 - (iv) the worker's ability to adapt to new employment; and
- (d) if—
 - (i) suitable employment is in fact not available to a partially incapacitated worker when the assessment is made; and
 - (ii) the worker establishes that the worker is, in effect, unemployable because employment of the relevant kind is not commonly available for a person in the worker's circumstances irrespective of the state of the labour market,

the worker's partial incapacity for work will be treated as total incapacity, but otherwise an assessment of the weekly earnings the worker could earn in suitable employment must be made on the basis that employment of the relevant kind is available to the worker and will continue to be available to the worker for the whole, or—in the case of an interim assessment—the relevant portion, of the worker's notional working life.

Amendment of s. 58B—Employer's duty to provide work

7. Section 58B of the principal Act is amended by striking out paragraph (d) of subsection (2) and the word "or" immediately preceding that paragraph.

Amendment of s. 63—Delegation to an exempt employer

8. Section 63 of the principal Act is amended by striking out from subsection (3aa)(a) "Division 4A of Part 4" and substituting "Division 4B of Part 4 (Compensation for Loss of Earning Capacity)".

Amendment of Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1995

9. Section 34 of the *Workers Rehabilitation and Compensation (Miscellaneous Provisions) Amendment Act 1995* is amended by inserting after subsection (1) the following subsections:

- (2) A scale of charges in force under section 32 of the principal Act immediately before the commencement of section 9 of this Act remains in force until superseded by a regulation fixing a scale of charges.

(3) Until a regulation is made for the purposes of section 67(1)(b) of the principal Act (as substituted by this Act), the claims that are to be disregarded under that paragraph are claims for secondary and unrepresentative disabilities.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor