

# Accident Compensation (Amendment) Bill

## EXPLANATORY MEMORANDUM

*Clause 1* provides the purpose of the Bill which is to make improvements to the effective operation of the WorkCare scheme resulting from the review of WorkCare.

*Clauses 2 and 3* contain commencement and citation provisions.

*Clause 4* amends section 3 of the Principal Act by substituting an object of the Principal Act which includes the making of provision for the effective rehabilitation of injured workers and for their early return to work.

*Clause 5* makes amendments to section 4 of the Principal Act which are consequential upon amendments contained in clause 72. Section 4 (1) will now require liability for compensation for all injuries or diseases caused to or suffered by workers before the appointed day to remain with those liable to pay compensation in accordance with the law operative at the time.

*Clause 6* amends section 5 of the Principal Act by making consequential amendments to section 5 (1) and by inserting a new sub-section (1A) to clarify the definition of injury.

*Clause 7* amends sections 6, 8 and 14 of the Principal Act. The amendments to sections 6 and 8 make it clear that those sections are only to apply to contracts entered into with natural persons both before and after the appointed day. The amendments to section 14 clarify the intent of that section.

*Clause 8* amends sections 19 and 20 of the Principal Act to provide a stronger return to work focus in the objectives and functions of the Accident Compensation Commission.

*Clause 9* inserts a new section 21A in the Principal Act which gives the Accident Compensation Commission additional powers in relation to Divisions 6, 6A and 6B of Part IV.

*Clause 10* amends sections 23, 24, 25 and 26 of the Principal Act in relation to the Board of Management of the Accident Compensation Commission.

*Clause 11* substitutes a new section 30 of the Principal Act. The new section replaces both the former section 30 and section 185. It clarifies the power of the Accident Compensation Commission to delegate its functions and powers.

*Clause 12* amends section 31 of the Principal Act by inserting a new sub-section (5) which provides for immunity from actions for officers or employees of the Accident Compensation Commission.

*Clause 13* amends section 37 of the Principal Act to make it clear that the Accident Compensation Commission must submit an annual report to the Minister.

*Clause 14* amends section 39 of the Principal Act by creating the offices of President for two new divisions of the Tribunal and altering the titles of the Tribunal's members.

*Clause 15* inserts a new section 39A in the Principal Act. This new section provides that the Tribunal shall now exercise its powers in three divisions namely the Accident Compensation Division, the Workers Compensation Division and the Contribution Assessment Division.

*Clause 16* amends section 40 of the Principal Act by inserting three new sub-sections which describe the functions of the three divisions of the Tribunal.

*Clause 17* amends sections 41, 42 and 43 of the Principal Act by making amendments which are a consequence of the reconstitution of the Tribunal.

*Clause 18* substitutes a new section 44 of the Principal Act to clarify the term of appointment of Tribunal members.

*Clause 19* amends sections 45, 46, 47, 48 and 49 of the Principal Act by making amendments which are a consequence of the reconstitution of the Tribunal.

*Clause 20* inserts new sections 50A, 50B and 50C in the Principal Act. Section 50A provides for the appointment of a Complaints Investigator by the Governor in Council, section 50B provides the functions and powers of the Complaints Investigator and section 50C provides the Complaints Investigator and those assisting the Complaints Investigator with immunity from action arising from the proper exercise of a power or function. These three new sections will replace section 237 of the Principal Act which is to be repealed (see Clause 93).

*Clause 21* amends section 51 of the Principal Act by substituting new sub-sections (1) and (2) for the present sub-sections (1), (2) and (3). Sub-section (1) provides for the appointment of officers and employees and sub-section (2) will enable the Registrar to employ persons to manage any property purchased for investment purposes.

*Clause 22* inserts new sections 51A, 51B and 51C in the Principal Act. Section 51A enables the Registrar to appoint a funds management agent to manage funds administered by the Registrar. Section 51B sets out the functions of the Registrar and section 51C enables the Registrar, subject to the approval of the Treasurer, to borrow money or to obtain temporary financial accommodation.

*Clause 23* substitutes new sections for the existing sections 52, 53, 54 and 55 of the Principal Act. New section 52 provides for the arrangement of business in the three new Divisions of the Tribunal; new section 53 provides that except for applications or matters referred to in sub-section (2), all matters before the Accident Compensation Division are to be first considered by an Arbitrator sitting alone; new sections 53A and 54 provide the responsibilities of Presidential members of the Accident Compensation Division; new section 55 provides the manner in which matters will be considered by the Workers Compensation Division and new section 55A provides how the Contribution Assessment Division shall be constituted.

*Clause 24* amends section 56 of the Principal Act by clarifying the powers of an Arbitrator presiding at a preliminary conference and in particular provides that an Arbitrator may make awards by consent.

*Clause 25* inserts a new Division in the Principal Act which provides for the creation, constitution and functions of the Tribunal Executive.

*Clause 26* amends section 57 of the Principal Act and in particular provides that hearings by the Contribution Assessment Division may be closed to the public if the Tribunal so orders.

*Clause 27* inserts a new section 57A in the Principal Act which requires an Arbitrator to comply with directions on questions of law by the President of the relevant Division.

*Clause 28* amends section 58 of the Principal Act to provide for the admissibility of rehabilitation status reports as evidence in proceedings and for the exchange of medical and like reports.

*Clause 29* amends sections 59, 61, 64, 66, 67, 68, 69, 71, 71A and 72 of the Principal Act by making consequential amendments to these sections.

*Clause 30* inserts a new section 72A in the Principal Act which will enable an award of the Tribunal for the payment of amounts to be enforced as if it were a judgment of either the Supreme Court, County Court or Magistrates' Court.

*Clause 31* amends sections 73, 74, 75 and 77 of the Principal Act. Section 76 of the Principal Act is also repealed.

*Sub-clauses* (1) and (2) amend section 73 by making consequential amendments and by inserting new provisions which make it clear that money administered by the Registrar for beneficiaries under both the *Workers Compensation Act 1958* and the Principal Act is to be part of the Accident Compensation Tribunal Fund.

*Sub-clause* (3) amends section 74 to clarify the manner in which contributions are made to the Accident Compensation Tribunal Fund. Other amendments are of a consequential nature.

*Clause 32* amends section 78 of the Principal Act to clarify the responsibility of the Tribunal Executive and the Registrar in relation to the Tribunal's annual report.

*Clause 33* makes consequential amendments to section 79 of the Principal Act.

*Clause 34* amends section 80 of the Principal Act to provide that the Tribunal Executive will now make the Tribunal's rules and that rules relating to costs must be approved by the Minister before they are made.

*Clause 35* amends section 81 of the Principal Act to extend the coverage in respect of sailors to that which exists for other workers.

*Clause 36* amends section 82 of the Principal Act by inserting a new sub-section (4A) which extends the meaning of serious and wilful misconduct in respect of driving offences.

*Clause 37* makes consequential amendments to sections 84 and 85 of the Principal Act and inserts a new sub-section (4) in section 84 which places a limit on the entitlement to compensation in relation to overseas workers.

*Clause 38* amends section 92 of the Principal Act by omitting discriminatory provisions and by providing for the payment of interest on compensation.

*Clause 39* amends sections 93 and 94 of the Principal Act by substituting new sub-sections in relation to the payment of weekly payments to workers who reach retirement age. The amendments also provide for the payment of weekly benefits for up to 12 months to workers who are injured after attaining retirement age. Finally the amendments provide a method for determining the normal retirement age of a worker in an occupation and for the giving of notice to workers that payments are to cease because of these provisions.

*Clause 40* amends section 95 of the Principal Act.

*Sub-clause* (1) amends sub-section (1) to make it clear that employment taken into account in determining "the worker's pre-injury average weekly earnings" must be continuous.

*Sub-clause* (2) inserts a new sub-section (1AA) which provides that if a worker voluntarily alters the hours of work or the nature of the work, periods prior to the alterations are to be disregarded when calculating the worker's pre-injury average weekly earnings.

*Sub-clause* (3) inserts a new sub-section (1B) which sets out how a worker's pre-injury average weekly earnings is to be calculated.

*Sub-clause* (4) inserts a new paragraph (ba) in sub-section (3) which makes it clear that if the normal number of hours of work is fixed by an industrial award, those hours are to be the normal hours for that worker.

*Sub-clause* (5) provides for the calculation of the pre-injury average weekly earnings for deemed workers.

*Sub-clause (6)* substitutes a new sub-section (4) which extends the present provisions to include apprentices.

*Clause 41* amends section 97 of the Principal Act by inserting three new sub-sections. New sub-section (2A) prevents dependant allowances in respect of the same dependant to be paid to both parents, new sub-section (7) prevents a worker from receiving benefits under both the *Workers Compensation Act 1958* and the Principal Act to the extent that they exceed the maximum rates for weekly benefits and new sub-section (8) disentitles a worker who is in prison from receiving weekly payments during the period of imprisonment.

*Clause 42* amends section 99 of the Principal Act to extend the meaning of "Rehabilitation Service".

*Clause 43* amends section 100 of the Principal Act. The amendments provide first that workers will not receive as weekly benefits more than they would have received if they were working; second that weekly payments being received by workers will be indexed on the anniversary of the date on which they became entitled to receive them and third that workers who are receiving weekly payments for total incapacity and commence to receive payments for partial incapacity shall have their benefits based upon either what they would earn unimpaired or what their pre-injury average weekly earnings are, appropriately indexed.

*Clause 44* amends section 101 of the Principal Act by inserted a new sub-section (1A) which requires a worker to give notice of the injury to the employer as soon as practicable.

*Clause 45* amends section 103 of the Principal Act. The amendments provide first that certificates of medical practitioners are to be in a form to be prescribed by Regulations and that they are to be of no effect if they contain any defect, omission or irregularity other than one that is immaterial; second that workers unable to comply with the medical certificate requirements may apply to the Tribunal for a determination of their entitlement; third that medical certificates are to have no effect for any period exceeding 28 days unless there are exceptional reasons; and fourth that a police report will be necessary for journey accidents involving motor vehicles.

*Clause 46* inserts a new section 103A in the Principal Act which requires a claim for compensation to be served on the employer as soon as practicable.

*Clause 47* amends section 108 of the Principal Act to remove the requirement to forward minor claims which have been accepted by the employer and to remove anomalies in sub-sections (2) and (4) and to extend the offences under sub-section (5).

*Clause 48* amends section 109 of the Principal Act first by making a number of consequential amendments to the section, second by clarifying that a matter that has been withdrawn need not be considered and third by extending the meaning of "genuine dispute" to include a dispute as to capacity for employment and where a delay in making a claim for compensation has prejudiced the ability to dispute the claim.

*Clause 49* inserts new sections 109A, 109B, 109C and 109D in the Principal Act. Section 109A follows the former section 109 (9) and enables a worker to apply for a determination by the Tribunal following the upholding of a genuine dispute application. Section 109B follows the former section 109 (13) and enables an Arbitrator considering an application under section 109 to make a recommendation. Section 109C provides a system for submitting claims for compensation under section 92 and in particular provides that if the Commission fails to refer a claim to the Tribunal within 60 days, the burden is upon the Commission to satisfy the Tribunal that the worker is not entitled to compensation. Section 109D provides a system for submitting claims for compensation under sections 98 and 99.

*Clause 50* inserts a new sub-section (5) in section 110 of the Principal Act to make it clear that weekly payments under this section must not be increased to exceed the maximum rates specified in section 93 or 94.

*Clause 51* inserts a new section 110A in the Principal Act which enables the Commission or a self-insurer to apply to the Tribunal to alter weekly payments where errors have been identified.

*Clause 52* makes amendments to section 111 of the Principal Act to remove anomalies and to further clarify the intent of this section. The new sub-section (4) also provides that weekly payments cannot, despite the deeming provisions of the section, exceed the maximum rates specified in section 93 or 94.

*Clause 53* amends section 112 of the Principal Act so that it now is concerned with applications arising from an unreasonable failure to accept an offer. A new sub-section (3A) is inserted to enable the Tribunal where it has determined that a worker has unreasonably failed to accept an offer to direct that the offer is deemed to be made again to a worker and that weekly payments subsequently be terminated. The substituted sub-section (4) provides that offers of suitable employment must be in writing and contain details of the terms of the employment offered.

*Clause 54* inserts new section 112A in the Principal Act which requires an employer in certain circumstances to provide employment to a worker who has been injured and who has a capacity for work unless this is not practicable.

*Clause 55* substitutes a new section 113 of the Principal Act to provide for the alteration or termination of weekly payments in situations where an order of the Tribunal is not required.

*Clause 56* amends section 114 of the Principal Act by inserting new sub-sections which give the Commission or a self-insurer the power to apply to the Tribunal to terminate or suspend compensation or weekly payments where—

the person is not a worker or the injury is not work caused;

the worker is not incapacitated;

the worker does not take reasonable steps to seek suitable employment after receiving a notice to do so;

the worker does not actively participate in a rehabilitation program or a training program or actively undertake employment that had been accepted;

the worker has materially reduced his or her capacity for employment due to a non-work related cause.

*Clause 57* inserts a new section 114A in the Principal Act which follows the present section 113 (2)–(5). The new section however now provides that benefits are to cease if there is no current certificate and that unless special circumstances exist a certificate has no effect for a period longer than 28 days.

*Clause 58* amends section 115 of the Principal Act by inserting a new sub-section (6) which clarifies what happens after a redemption is approved in relation to the amount not redeemed.

*Clause 59* inserts a new section 116 in the Principal Act which extends the scope of the present section 116 to situations where the Commission or self-insurer has not acted in response to a claim. A new section 116A is also inserted. This new section enables an employer to apply to the Commission and, if not satisfied, to the Tribunal about decisions of the Commission that have adverse financial consequences and which should not have been made or which have been omitted to have been made.

*Clause 60* amends section 117 of the Principal Act first by making a series of amendments which are consequential upon other amendments; second by making it clear that except in certain circumstances it is the applicant that must satisfy the Tribunal that it should make

a determination in the applicant's favour and third by enabling an Arbitrator to refer matters to a Presidential member.

*Clause 61* makes consequential amendments to section 118 of the Principal Act and inserts new sub-sections (5) and (6) which clarify when weekly payments are to commence and when section 120 is to apply.

*Clause 62* inserts a new section 118A in the Principal Act. This new section provides for applications to a Presidential member following a recommendation by a conciliator that payments be terminated. Under this section applications are to be made within 14 days, payments can be suspended at the discretion of a Presidential member in certain circumstances and in specified circumstances payments to a worker may be recovered.

*Clause 63* amends section 119 of the Principal Act to provide for the Commission to pay interest to employers when it is late reimbursing employers for payments made, to clarify when payments are to be made and to extend the meaning of employer for the purposes of the section.

*Clause 64* amends sections 120, 121 and 122 of the Principal Act.

*Sub-clause (1)* clarifies the intent of section 120.

*Sub-clause (2)* provides that any additional payment by the Commission caused by the neglect or fault of the employer may be recovered from the employer.

*Sub-clause (3)* clarifies the responsibilities for notifying that a worker has returned to work.

*Clause 65* inserts a new section 122A in the Principal Act. This new section enables the Commission to recover weekly payments made in error if such recovery does not cause undue hardship and payments made to employers that are not passed on to workers.

*Clause 66* amends section 123 of the Principal Act by substituting sub-section (2) which clarifies the effect of the suspension of a worker's entitlement to compensation.

*Clause 67* amends section 125 of the Principal Act to clarify the extent of the employer's liability for the first five days of weekly payments and to provide that employers are not liable for weekly payments for this period in respect of any injury occurring within the first 6 months of returning to work after the injury or in respect of any journey accident injuries.

*Clause 68* clarifies the intent of section 126 of the Principal Act.

*Clause 69* amends section 128 of the Principal Act to clarify the intent of the existing sub-section (2). The present sub-section (1) is replaced by the new section 128A.

*Clause 70* inserts a new section 128A in the Principal Act which provides for the making of interim decisions by the Tribunal.

*Clause 71* amends section 129 of the Principal Act as a consequence of the new Divisions inserted by clause 72.

*Clause 72* inserts three new Divisions into the Principal Act.

*Division 6A* (sections 129A–129M) makes provision for the Commission and self-insurers to obtain from prior insurers, self-insurers and employers a just and equitable contribution to payments made by the Commission or a self-insurer in respect of a worker who suffered any injury, disease or industrial deafness before the appointed day which contributed to injury after the appointed day.

*Division 6B* (sections 129N–129S) provides for the apportionment of liability between the Commission and prior insurers in respect of common law proceedings and for the conduct of a defence.

*Division 6C* (sections 129r–129v) provides for the supplementation of payments from the Accident Compensation Fund in certain circumstances.

*Clause 73* amends sections 130, 131 and 132 of the Principal Act so as to transfer the administration of certain funds and related powers from the Tribunal to the Registrar. Section 133 of the Principal Act is repealed. The amendments also permit the Tribunal to use land or buildings in which it has invested to perform its functions under the Act, and to enable the expenses incurred by the Registrar in administration of money under the Act to be paid out of the Accident Compensation Tribunal Fund.

*Clause 74* amends section 134 of the Principal Act to extend the contract of insurance to cover an employer's common law liability to pay compensation either under the Act or under the law of any place outside Victoria in respect of a worker to whom section 84 applies and to deem the contract of insurance to exist where an employer pays levy in respect of remuneration paid to a worker who performed services outside Victoria and to whom section 84 applies.

*Clause 75* amends section 135 of the Principal Act to impose a limit on the amount that may be awarded at common law to \$140 000 less amounts paid under the Act. This limit is to apply to all common law settlements made after proclamation. The amendment also clarifies that payments under this Act and under the *Wrongs Act* 1958 are not to be cumulative.

*Clause 76* makes a consequential amendment to section 137 of the Principal Act following the passage of the *Transport Accident Act* 1986.

*Clause 77* makes a number of amendments relating to self-insurers.

*Sub-clause (1)* makes corrections to the Principal Act.

*Sub-clause (2)* inserts a provision to the effect that where the Commission assumes liability under section 151 (1) of the Principal Act the provisions of Part IV apply as if the Commission were the self-insurer.

*Sub-clause (3)* inserts a provision which provides for refunding of any surplus on reassessment to the former self-insurer.

*Clause 78* substitutes section 158 of the Principal Act to strengthen the return to work objective of the Council.

*Clause 79* substitutes section 159 of the Principal Act to strengthen the return to work functions of the Council.

*Clause 80* amends section 160 of the Principal Act to empower the Council to accept referrals for rehabilitation programs and to publish approvals by the Council of rehabilitation services and persons providing certificates of incapacity under section 114A.

*Clause 81* inserts a new section 160A in the Principal Act which requires the Council to provide a report on the rehabilitation status of a worker to the Commission periodically or when requested.

*Clause 82* amends section 161 of the Principal Act to provide for a Board of Management of the Council.

*Clause 83* makes consequential amendments to sections 162, 163, 164, 165, 166 and 167 of the Principal Act. The clause also inserts a further provision in section 162 of the Principal Act to protect a Director who acts in good faith.

*Clause 84* inserts a provision in section 171 of the Principal Act to protect an officer or employee of the Council who acts in good faith.

*Clause 85* amends section 172 of the Principal Act to clarify the existing provision.

*Clause 86* inserts a new section 172A in the Principal Act which enables the Council to borrow money or obtain financial accommodation, subject to the approval of the Treasurer, on such condition as the Treasurer imposes.

*Clause 87* amends section 176 of the Principal Act to make it clear that the Victorian Accident Rehabilitation Council must submit an annual report to the Minister when it is available.

*Clause 88* repeals section 185 of the Principal Act which relates to delegation. The delegation powers are now found in new section 30.

*Clause 89* substitutes section 189 of the Principal Act and establishes a Bonus Fund Account. The amendment sets out the basis for the scheme.

*Clause 90* amends section 197 of the Principal Act so as to exempt an employer whose total remuneration in a year does not exceed the exemption limit from registration unless a worker employed by the employer makes a claim for compensation and the Commission issues the employer with a notice requiring the employer to register.

*Clause 91* amends section 218 of the Principal Act to clarify that a party aggrieved by a decision under this section may lodge an appeal with the Contribution Assessment Division.

*Clause 92* amends section 236 of the Principal Act so that the production of a notice of assessment or a copy under seal is conclusive evidence of the making of the assessment and that the amounts and particulars are correct, and the production of a document under the seal of the Commission setting out a decision or determination of the Commission under this Part is conclusive evidence that the decision or determination is correct.

*Clause 93* repeals section 237 of the Principal Act relating to the Complaints Investigator. The appointment of the Complaints Investigator, his or her functions and powers are now contained in new sections 50A–50C.

*Clause 94* inserts a new section 237A into the Principal Act to enable the Commission to enter into reciprocal agreements relating to the payment of compensation for an injury which occurred in Victoria or in another State which has a similar system of compensation.

*Clause 95* amends section 239 of the Principal Act to extend the power of the Commission to obtain information and evidence under the *Workers Compensation Act 1958*.

*Clauses 96 and 97* amend sections 243 and 244 of the Principal Act to extend the secrecy provisions to particular agencies. Section 243 is amended to include the Director-General of the Department of Management and Budget and committees of management of statutory superannuation schemes. Section 244 is amended to include the Director-General of the Department of Labour, the Occupational Health and Safety Commission and the Council.

*Clause 98* amends sections 246 and 247 of the Principal Act to include service of documents required under the Regulations or the rules.

*Clause 99* amends section 248 of the Principal Act to include the offence of obtaining of a benefit fraudulently or assisting a person to obtain a benefit fraudulently. The penalty has also been increased to 100 penalty units or imprisonment for two years.

*Clause 100* amends section 249 of the Principal Act to include a penalty of 20 penalty units or imprisonment for one month.

*Clause 101* inserts a new section 249A in the Principal Act to enable the Commission to recover payments where a person is convicted of an offence under section 248 or 249.

*Clause 102* amends section 253 of the Principal Act to enable the adoption of the provisions of any Commonwealth Act, statutory rule or other instrument.



*Clause 103* is a transitional provision relating to members of the Tribunal.

*Clause 104* amends the *Chiropractors and Osteopaths Act 1978* to enable a Certificates Committee of the Board to be set up to consider any questions relating to the issue of certificates of incapacity under the *Accident Compensation Act 1985* or any other certificate issued relating to the incapacity of a person. The amendment sets up a similar procedure for inquiry as exist under the *Medical Practitioners Act 1970* with the inclusion of the power to fine if a person has been found guilty of unprofessional conduct. The issue of a false or misleading certificate under the *Accident Compensation Act 1985* is deemed to be unprofessional conduct.

*Clause 105* makes a consequential amendment to section 17BA of the *Employment and Training Act 1981*.

*Clause 106* amends the *Medical Practitioners Act 1970* to enable a Certificates Committee of the Board to be set up to consider any question relating to the issue of a medical certificate under the *Accident Compensation Act 1985* or any other certificate issued relating to the incapacity of a person. The amendment enables the Board to fine a person found guilty of professional misconduct. The issue of a false or misleading certificate under the *Accident Compensation Act 1985* is deemed to be professional misconduct.

*Clause 107* amends the *Physiotherapists Act 1978* to enable a Certificates Committee of the Board to be set up to consider any questions relating to the issue of certificates of incapacity under the *Accident Compensation Act 1985* or any other certificate issued relating to the incapacity of a person. The amendments set up similar procedures for inquiry as exist under the *Medical Practitioners Act 1970* with the inclusion of the power to fine if a person has been found guilty of unprofessional conduct. The issue of a false or misleading certificate under the *Accident Compensation Act 1985* is deemed to be unprofessional conduct.

*Clause 108* makes a consequential amendment to section 38 of the *Transport Accident Act 1986* to permit the Transport Accident Commission to act as delegate of the Accident Compensation Commission.

*Clause 109* makes consequential amendments to sections 1A, 9, 34, 35, 36, 44, 46 and 85 of the *Workers Compensation Act 1958*.

