

1992

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

WORKERS' COMPENSATION (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

Circulated by the authority of the Minister for Industrial Relations

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Explanatory Memorandum

Outline

The Workers' Compensation (Amendment) Bill 1992 ("the Bill") amends the *Workers' Compensation Act 1951* ("the Act") to facilitate the resolution of compensation claims for loss of hearing.

The Bill also amends the Act to rectify an incorrect reference in Schedule 1, effected by the *Workers' Compensation (Amendment) Act 1991*.

The Workers' Compensation Act 1951

Compensation for loss of hearing

The Act provides for the compensation of workers for injuries arising out of or in the course of their employment and, in particular, where a worker suffers a loss of hearing or further loss of hearing in the course of his or her employment the Act deems that loss of hearing to be a personal injury arising out of the employment of that worker by his or her employer.

Whilst the Act makes an employer liable to pay compensation in respect of this personal injury, that employer may also recover contributions from any of the worker's previous employers who had employed the worker in a capacity that contributed to the injury. As contribution is negotiated by the parties concerned or is settled by arbitration in the Magistrates Court this process can be very time consuming and involve considerable legal costs and a payment to the worker is not usually made until contributions from the relevant employers are agreed. There are particular difficulties associated with resolving the contributions to be made to the compensation by former employers in the case of compensation for loss of hearing or further loss of hearing of a worker.

Formula for calculation of compensation

Schedule 1 of the Act contains a formula for the calculation of compensation payable to an injured worker. The provisions of the *Workers' Compensation (Amendment) Act 1991* introduced an incorrect reference into the formula for the calculation of the amount of weekly compensation payable to an incapacitated worker for the first 26 weeks of the incapacity as a result of which the amount of compensation payable in any particular case has been reduced.

The Workers' Compensation (Amendment) Bill 1992

Compensation for loss of hearing

The Bill amends the Act with regard to the liability of an employer to pay compensation for a loss of hearing or further loss of hearing to make the last employer of a worker, who employs that worker in work of a kind which contributes to, aggravates, accelerates or results in the recurrence of a loss of hearing by the worker ("the recent employer"), liable to compensate the worker by deeming the loss of hearing an injury to have arisen out of that employment.

The Bill further amends the Act with regard to loss of hearing cases to specify a "relevant period" prior to the occurrence of the injury which will be used for the purpose of establishing the liability of any other employer who employed the worker in work which caused or contributed to the loss of hearing.

Where an employer employed the worker in work which caused or contributed to the loss of hearing in the relevant period that employer will be liable to pay to the recent employer such contribution as is either agreed or settled by arbitration.

The introduction of a "relevant period" will be of assistance in determining which of the prior employers of a worker who claims compensation from a recent employer may be liable to contribute to the compensation. This will assist in streamlining the process and facilitate the earlier finalisation of compensation claims.

Formula for the calculation of compensation

The Bill amends Schedule 1 of the Act to correct a reference in the formula for the calculation of compensation payable to a worker and enables workers who have been disadvantaged by the existence of the incorrect reference to recover the difference between the amount of compensation which they have received and that to which they would otherwise have been entitled.

Financial implications

There are no financial implications arising from the Bill.

MAIN AMENDMENTS

Clause 4- Compensation for death or incapacity through loss of hearing

Clause 4 inserts a new section 9AA into the Act to modify the application of section 9 of the Act in respect of a disease that is a loss or a further loss of hearing.

Section 9 establishes the liability of an employer to pay compensation to a worker in respect of the death or incapacity through disease of the worker which is wholly or partially attributable to the worker's employment by that employer.

Although the provisions of section 9 apply in respect of loss of hearing suffered by a worker as a loss of hearing comes within the definition of disease in section 6 of the Act, the particular problems associated with establishing the liability of a prior employer to contribute to compensation, where the loss of hearing of the worker is partially attributable to that employer's employment of the worker, require that section 9 be modified in its application to a disease that is a loss of hearing.

Paragraph 9AA(a) modifies the application of paragraph 9(2)(c) of the Act which deems the contraction, aggravation, acceleration or recurrence of a disease to be a personal injury to a worker arising out of the employment of the worker by his or her employer so that the employer referred to in this paragraph, and to whom liability attaches, is the employer who last employed the worker in employment of a kind which contributed to the contraction, aggravation, acceleration or recurrence of the disease.

Paragraph 9(2)(d) which is unchanged establishes the date of the injury.

Subsection 9(3) establishes the liability of a prior employer who employed the worker prior to the liability of the employer referred to in paragraph 9(2)(c) arising, to contribute to the compensation where that prior employer employed the worker in employment that contributed to the disease. This provision which applies in respect of any prior employment of the worker, no matter how long prior to the date of the injury, is modified by paragraph 9AA(b) to restrict its application to employment within a newly defined "relevant period".

The purpose of this restriction is to avoid delays in settlement or arbitration of compensation claims resulting from the difficulties associated with making inquiries and assessments concerning prior employment contributing to the loss of hearing of a worker, which may have occurred many years prior to the injury in respect of which an employer is liable under paragraph 9(2)(c).

Paragraph 9AA(c) also modifies the application of section 9 of the Act, in relation to a disease that is a loss, or further loss of hearing, as if a new subsection 9(6) were inserted in the Act for the purpose of defining the term "the relevant period", to distinguish between circumstances in which the worker in question was employed by the employer referred to in paragraph 9(2)(c) ("the recent employer") at the date of the relevant injury and circumstances where the worker was not employed by that employer on that date.

Paragraph 9(6)(a) would apply where the worker was still in the employment of the recent employer at the date of the relevant injury to make the relevant period -

- (i) the 5 years preceding the date of the relevant injury, provided the worker had not within that period recovered compensation in respect of a prior injury (being a loss or further loss of hearing) that occurred within that period; or
- (ii) if the worker had recovered such compensation within that period - the period commencing the day after the date on which the employer from whom that compensation was recovered became liable to pay that compensation and ending on the date of the relevant injury.

Paragraph 9(6)(b) would apply where the worker was not employed by the recent employer at the date of the relevant injury to make the relevant period -

- (i) the 5 years preceding the last day on which the worker was employed by the recent employer, provided the worker had not within that period recovered compensation in respect of a prior injury (being a loss or further loss of hearing) that occurred within that period; or
- (ii) if the worker had recovered such compensation within that period - the period commencing the day after the date on which the employer from whom that compensation was recovered became liable to pay that

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compensation and ending on the last day on which the worker was employed by the recent employer.

Clause 5 - Correction to Schedule 1

Clause 5 corrects an incorrect reference to a series of subparagraphs in Schedule 1 of the Act which was effected by the *Workers' Compensation Act 1991*. This resulted in a change to the formula used for the calculation of the entitlement of workers to compensation so that workers became entitled to a lower amount of compensation than they would otherwise have received.

Subclause 5(2) therefore applies the amendment in subclause 5(1) retrospectively to enable those workers who have been adversely affected to recover the difference between the amount of compensation they have received and the amount to which they would have been entitled had it not been for the incorrect references in Schedule 1.

FORMAL PROVISIONS

Clauses 1, 2 and 3 are formal provisions respectively relating to the citation of the Bill, once enacted, the commencement of the Act and the interpretation of a term used in the Bill.