**2019**

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

**WORKERS COMPENSATION AMENDMENT BILL 2019**

**EXPLANATORY STATEMENT**

**Presented by**

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**WORKERS COMPENSATION AMENDMENT BILL 2019**

This explanatory statement relates to the Workers Compensation Amendment Bill 2019 (the Bill). It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

**OVERVIEW**

Default Insurance Fund cover

The *Workers Compensation Act 1951* (WC Act) currently provides that a worker employed by a contractor can claim compensation against the contractor or, if the contractor is uninsured, the principal.

The Default Insurance Fund (DIF) is established under Part 8.2 of the WC Act to provide a safety net to meet the cost of workers’ compensation claims made by workers whose employers have no workers’ compensation insurance.

This Bill will ensure that the DIF can provide workers’ compensation cover to an injured worker who is employed by a contractor that does not have a valid workers’ compensation policy in place and where there is also a responsible principal contractor that is uninsured.

Family day care educators

In 2006 all employees engaged under the *Family Day Care (Australian Capital Territory) Award 1999* (the Award), were considered workers for the purposes of workers’ compensation. For those who were not employed under the award, the Minister could make a declaration to declare them as workers under s16A.

Two declarations have been made since 2006 declaring individuals employed by approximately 13 family day care services in the Territory to be workers employed by that service for the purposes of the WC Act.

To simplify this process and remove any confusion, the Bill makes amendments which declare all individuals who provide family day care services through an approved family day care service to be workers employed by that service for the WC Act. As a result, the current declarations will no longer be required.

## The Bill will adopt the definition contained in the *Education and Care Services National Law* (ACT) which governs the approval of all family day care services in Australia, providing a more contemporary and appropriate definition for workers’ compensation purposes.

This will ensure continuity of cover for family day care educators in the Territory, regardless of whether they care for children in their own home, or in the child’s home*.*

The Bill also contains minor and technical amendments.

**HUMAN RIGHTS CONSIDERATIONS**

There are no human rights implications as a result of this Bill.

The transitional provisions in clause 13 of the Bill in relation to the *Workers Compensation (Family Day Care and In-Home Care) Declarations* do not make any practical changes to the declarations. While it applies to declarations made in 2006 and 2018, its effect is not retrospective, rather it will apply to rectify a technical gap that has arisen as a result of the amendments to the definition of approved family day care service and approved in-home care made by the Commonwealth. This will ensure continuity of the meaning given to those terms in the *Workers Compensation (Family Day Care and In-Home Care) Declarations*.

**CLIMATE CHANGE VULNERABILITY ASSESSMENT**

The measures contained in the Bill have negligible climate change effects.

**SUMMARY OF CLAUSES**

**Clause 1 Name of Act**

This is a technical clause that sets out the name of the Bill, once enacted, as the *Workers Compensation Amendment Act 2019* (the Act).

**Clause 2 Commencement**

This clause provides that the Act will commence on the day after it is notified on the ACT Legislation Register.

**Clause 3 Legislation amended**

This clause provides that the Bill amends the *Workers Compensation Act 1951* (WC Act).

**Clause 4 Legislation Repealed**

This clause revokes the two existing Workers Compensation (Family Day Care and In-Home Care) Declarations as the new definition of an *approved family day care service* will capture all day care services approved under the *Educational and Care Services National Law (ACT) Act 2011*.

**Clause 5 Meaning of worker  
Chapter 3 heading, note 1**

This clause substitutes the term *family day care carer* with *family day care educator*, consistent with current terminology used within the *Educational and Care Services National Law (ACT) Act 2011* and is consequential on changes to section 16A of the WC Act.

**Clause 6 Chapter 3 heading, note 2**

This clause substitutes the term *family day care carers* with *family day care educators*, consistent with current terminology used within the *Educational and Care Services National Law (ACT) Act 2011.*

**Clause 7 Liability of principal for uninsured contractor’s injured worker**

**Section 13 (5)**

This clause has been inserted to put beyond doubt that the DIF covers workers’ compensation claims where both the principal and contractor are uninsured.

**Clause 8 Section 16A heading**

This clause substitutes the term *family day care carer* with *family day care educator*, consistent with current terminology used within the *Educational and Care Services National Law (ACT) Act 2011.*

**Clause 9 Section 16A (1) and (2)**

This clause provides that an educator engaged by an approved family day care provider is taken to be a worker of the service for the purposes of the WC Act. This clause also retains the power for the relevant Minister to make a declaration that people engaged by an approved family day care service should be treated as workers of the service for the purposes of the WC Act.

**Clause 10 Section 16A (5)**

This clause defines *approved family day care service* and *educator* for the purposes of section 16A.

**Clause 11 Approved insurers must give information**

**Section 168 (1) (a)**

This clause makes a technical amendment that substitutes *earned premium* with *gross written premiums* to ensure clarity and consistency with the information collected by the DIF under section 168A of the WC Act.

**Clause 12 Section 168 (3)**

Following on from clause 13, this clause removes the definition of *earned premium* as it is incorrect.

**Clause 13 New chapter 20**

This clause ensures that both of the current the Workers Compensation (Family Day Care and In-Home Care) Declarations will continue to operate from the date they were issued until they are repealed by the Amendment Act and are not affected by the amendments to the definition of *approved family day care service*.