



New South Wales

# Workers Compensation Legislation Amendment (Benefits) Bill 2008

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Workers Compensation Act 1987* (**the 1987 Act**) as follows:

- (a) to increase the lump sum death benefit to \$425,000 (with the increased benefit to apply to deaths with a date of injury after the commencement of the 1987 Act where the date of death is on or after 24 October 2007),
  - (b) to provide that the lump sum death benefit must be paid to a deceased worker's estate if the worker dies leaving no financial dependants,
  - (c) to remove discretion to reduce the amount payable as lump sum death benefit to a deceased worker's dependants on the basis of partial financial dependency (without preventing apportionment of the death benefit amount among multiple dependants),
  - (d) to enable the introduction of an alternative method of calculating workers compensation insurance premiums as an optional alternative method to be available to certain large employers with the approval of the Workers Compensation Nominal Insurer,
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- (e) to enable the Nominal Insurer to require employers whose workers compensation premiums are calculated by means of an optional alternative method to lodge a security deposit or guarantee to provide security for the payment of those premiums.

The Bill also amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* to extend the amendments mentioned in paragraphs (a)–(c) above (relating to lump sum death benefits) to fire fighters and emergency and rescue workers covered by that Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the *Workers Compensation Act 1987* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

### Lump sum death benefits

The 1987 Act provides for the payment of lump sum compensation if an injury results in the death of a worker and the worker has dependants, and provides for the apportionment of that compensation among the deceased worker's dependants.

**Schedule 1 [2]** increases the lump sum death benefit to \$425,000 and provides for the payment of the lump sum to the dependants of the deceased worker or to the estate of the deceased worker if the worker leaves no dependants. **Schedule 1 [1], [3] and [7]** make consequential amendments.

**Schedule 1 [4]** makes it clear that the apportionment of the lump sum death benefit among dependants is not to result in any reduction in the total amount payable, so that if there is only one dependant that dependant receives the full amount of compensation and if there are 2 or more dependants the full amount of compensation is apportioned between them.

**Schedule 1 [5] and [6]** make consequential amendments to provisions for the indexation of the lump sum death benefit.

**Schedule 2 [1]–[4]** extend the lump sum death benefit amendments to fire fighters and other emergency and rescue workers covered by the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

### **Optional alternative premium calculation method**

The 1987 Act provides for the premium to be paid for a workers compensation insurance policy to be calculated in the manner fixed by an insurance premiums order.

**Schedule 1 [8]** (proposed section 168A) provides that an insurance premiums order may fix (as an *optional alternative method*) an alternative method of calculating premiums for workers compensation insurance policies. An optional alternative method will only apply to large employers who satisfy eligibility criteria established by the insurance premiums order and who are approved by the Nominal Insurer for the alternative method.

**Schedule 1 [9]** (proposed section 172A) provides for the Nominal Insurer to require an employer to whom an optional alternative method of premium calculation applies to provide a security deposit or guarantee to be available for discharging the employer's liability to pay premiums calculated under the optional alternative method.

### **Savings and transitional**

**Schedules 1 [11] and 2 [5]** provide savings and transitional regulation making powers.

**Schedules 1 [10] and 2 [6]** enact consequential savings and transitional arrangements. Under those arrangements, the death benefit amendments apply to deaths occurring on or after 24 October 2007 but not to a death resulting from an injury received before the commencement of the 1987 Act.