



New South Wales

# Workers Compensation Legislation Amendment Act 2006 No 25

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New South Wales

# **Workers Compensation Legislation Amendment Act 2006 No 25**

Act No 25, 2006

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An Act to amend the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* to make further provision with respect to the grouping of employers for workers compensation insurance purposes; to provide for contributions to the WorkCover Authority Fund by certain employers licensed under Commonwealth workers compensation legislation; and for other purposes. [Assented to 17 May 2006]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Workers Compensation Legislation Amendment Act 2006*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Workers Compensation Act 1987 No 70**

The *Workers Compensation Act 1987* is amended as set out in Schedule 1.

**4 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86**

The *Workplace Injury Management and Workers Compensation Act 1998* is amended as set out in Schedule 2.

**5 Repeal of Workers Compensation Legislation Amendment Act 2002 No 124**

The *Workers Compensation Legislation Amendment Act 2002* is repealed.

**6 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      **Amendment of Workers Compensation Act 1987 No 70**

(Section 3)

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*group* means the employers who constitute a group under Division 2A of Part 7.

**[2] Section 160 Recovery of excess from employer**

Omit the definition of *prescribed excess amount* from section 160 (1).

Insert instead:

*prescribed excess amount*, in respect of a weekly compensation claim paid under a policy of insurance, means the prescribed excess amount specified by the relevant insurance premiums order that applies to that policy.

**[3] Section 160 (9)**

Omit the subsection. Insert instead:

- (9) Without limiting the operation of that provision, an insurance premiums order referred to in the definition of *prescribed excess amount* in subsection (1) may specify different amounts (or no amount) according to the period within which the employer gave notice of the injury concerned.

**[4] Section 175 Employers evading payment of correct premiums**

Insert after section 175 (4):

(4AA) If the Authority finds that:

- (a) an employer has contravened section 175G (Members of group to have policies with same scheme agent and common renewal date) as a result of the issue or renewal of a policy of insurance, and
- (b) the total premium payable for those policies is less by a certain amount than the total premium that would have been payable had that section been complied with,

the Authority may recover from the employer in a court of competent jurisdiction as a debt due to the Authority a sum equal to twice that amount plus the late payment fee provided for by subsection (4A). Half of that sum is to be paid by the Authority

to the insurer and the other half into the WorkCover Authority Fund.

- (4AB) For the purposes of the application of the *Limitation Act 1969* to an action on a cause of action to recover an amount under subsection (4) or (4AA), the cause of action first accrues to the Authority when the Authority makes the finding referred to in those subsections.

**[5] Section 175 (4A) (b)**

Omit the paragraph. Insert instead:

- (b) under subsection (4AA) as from the date the premium for the issue or renewal of the policy referred to in subsection (4AA) (a) first became due and payable to the insurer.

**[6] Section 175A Recovery from directors of corporation evading payment of correct premium**

Insert “or (4AA)” after “section 175 (4)” in section 175A (1).

**[7] Part 7, Division 2A**

Insert after Division 2:

**Division 2A Grouping of employers for insurance purposes**

**175D Grouping of employers**

- (1) In this Division:  
*group* means a group constituted under Part 10A of the *Taxation Administration Act 1996*, but does not include any member of the group in respect of whom a determination under section 175E of this Act is in force.
- (2) This Division does not apply to the following:
- (a) an employer who is a self-insurer,
  - (b) the persons, groups of persons and bodies constituted as a primary group by virtue of section 106J of the *Taxation Administration Act 1996* (being government departments),
  - (c) the members of a group where the total wages payable to workers employed by the members of the group do not exceed:
    - (i) \$600,000 per year, or
    - (ii) if some other amount is prescribed by the regulations—that other amount.

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- (3) The regulations may make provision for or with respect to excluding, or authorising the Authority to exclude, any class or classes of employers from the operation of this Division or specified provisions of this Division.

**175E Exclusion of employers from groups**

- (1) The Authority may, by order in writing, determine that an employer who would, but for the determination, be a member of a group is not a member of the group.

**Note.** Section 175F sets out the circumstances in which a determination may be made under this section.

- (2) The Authority must give notice in writing of a determination to the employer in respect of whom the determination is made and to each member of the group.
- (3) A determination takes effect:
- (a) on the date on which notice under subsection (2) is given to the employer excluded from the group, or
  - (b) if another date of effect (including an earlier date) is specified in the notice—on that other date.
- (4) A determination continues in force until it is revoked.
- (5) The Authority may revoke a determination only if satisfied that the employer to which it relates no longer is an employer to which section 175F applies.
- (6) Notice of the revocation of a determination must be given by the Authority:
- (a) to the employer in respect of whom the determination was made, and
  - (b) to each other member of the group of which the employer is a member as a result of the revocation.
- (7) A revocation of a determination takes effect on the date on which notice under subsection (6) (a) is given to the employer in respect of whom the determination was made.
- (8) If an employer in respect of whom a determination under this section was made becomes aware that the employer no longer is one to which section 175F applies, the employer must, within 14 days, notify the Authority of that fact.
- Maximum penalty (subsection (8)): 500 penalty units.

**175F Grounds for excluding employers from group**

- (1) A determination may be made by the Authority under section 175E in respect of the following employers only:
  - (a) an employer who would, but for the determination, be a member of a group arising under section 106H of the *Taxation Administration Act 1996* (Primary groups arising from the use of common employees),
  - (b) an employer that carries on a business as trustee of a trust and would, but for the determination, be a member of a group arising under section 106I of the *Taxation Administration Act 1996* (Primary groups of commonly controlled businesses),
  - (c) an employer that is a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose, but only if the employer's business is not in direct competition with any for-profit organisation.
- (2) In the case of an employer referred to in subsection (1) (b), the determination may be made only if the Authority is satisfied that the employer would, but for the determination, be a member of a group with a person who carries on another business because of the application of one (but not more than one) of the following grouping principles:
  - (a) the exclusive ownership grouping principle (section 106I (2) (a) and (b) of the *Taxation Administration Act 1996*),
  - (b) the corporate grouping principle (section 106I (2) (c) and (d) and (3) of the *Taxation Administration Act 1996*),
  - (c) the common beneficiary grouping principle (section 106I (2) (e) and (f) and (5)–(8) of the *Taxation Administration Act 1996*).
- (3) The Authority must not make a determination under section 175E in respect of an employer referred to in subsection (1) (a) or (b) unless satisfied that the employer that is the subject of the determination has continuously carried on the business concerned, and will continue to carry on that business, substantially independently of the other member or members of the group.
- (4) In determining whether an employer carries on business substantially independently of the other member or members of a group, the Authority is to have regard to the nature and degree of ownership or control of the business of each member of the group, the nature of each of those businesses and any other matter that the Authority considers relevant.

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**175G Members of group to have policies with same scheme agent and common renewal date**

- (1) The policy of insurance that an employer who is a member of a group obtains and maintains in force for the purposes of compliance with section 155 (a *workers compensation insurance policy*) must:
  - (a) be obtained from or through the same scheme agent that provides workers compensation insurance policies to the other members of the group, and
  - (b) have the same renewal date as those other policies.
- (2) An employer who contravenes subsection (1) is guilty of an offence.  
Maximum penalty: 500 penalty units.
- (3) If an employer who is a member of a group does not obtain or maintain in force a policy of insurance in compliance with this section, the Authority may by notice in writing to a scheme agent:
  - (a) direct the transfer of any policy of insurance obtained or maintained in contravention of this section to a specified scheme agent (being the scheme agent from or through whom workers compensation insurance is provided to other members of the group concerned), and
  - (b) direct the alteration of the policy of insurance so that the policy renews on the same date as the policies of other members of the group.
- (4) A scheme agent must give effect to a direction given to it under this section.

**175H Joint and several liability of group members**

- (1) If an employer who is a member of a group fails to pay an amount that the employer is required to pay under this Part (including any premium payable for a policy of insurance required under this Part and any sum recoverable by the Authority under this Part from the employer), every member of the group is liable jointly and severally to pay the amount.
- (2) If 2 or more persons are jointly or severally liable to pay an amount as referred to in this section, the person entitled to payment may recover the whole of the amount from them, or any of them, or any one of them.
- (3) A person who pays an amount in accordance with the liability imposed by this section has such rights of contribution or indemnity from the other person or persons as are just.

**175I Registration**

- (1) The Authority is to keep a register of employers who are members of a group.
- (2) An employer must notify the Authority if the employer becomes a member of a group to which this Division applies.
- (3) The notification is to be made within 14 days of the employer becoming aware, or of the date the employer ought reasonably to have become aware through the exercise of due diligence, that the employer is a member of a group to which this Division applies.
- (4) The notification is to be made to the Authority in a form and manner approved by the Authority.
- (5) The Authority may remove an employer from the register if it is satisfied that the employer has ceased to be an employer that is a member of a group to which this Division applies.
- (6) If a change occurs in the information provided to the Authority in a notification, the employer must, within 14 days, notify the Authority of that change.  
Maximum penalty: 500 penalty units.

**175J Inspection of records of employers**

- (1) The Authority may direct an employer in writing to make available, at the time and place specified in the direction, for inspection by a specified person authorised by the Authority, records of a specified kind in the possession of the employer that are relevant to any of the following:
  - (a) the determination of whether the employer is a member of a group,
  - (b) the identity of other members of a group of which the employer is a member.
- (2) A person authorised under subsection (1) may inspect records in accordance with the terms of the direction and make copies of, or take extracts from, those records.
- (3) An employer given a direction under this section:
  - (a) must comply with the direction, and
  - (b) must not wilfully obstruct or delay an authorised person when exercising any power under subsection (2).Maximum penalty: 100 penalty units.
- (4) If an inspection under this section reveals that an employer has contravened a provision of this Division, the Authority is entitled

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to recover in a court of competent jurisdiction, as a debt due to the Authority from the employer, the costs incurred by the Authority in connection with that inspection.

- (5) A certificate issued by the Authority certifying as to the costs incurred by the Authority in connection with such an inspection is evidence of the matters certified.

**[8] Schedule 6 Savings, transitional and other provisions**

Omit clause 3 of Part 18E of the Schedule.

**[9] Schedule 6, Part 19B**

Insert after Part 19A:

**Part 19B Provisions consequent on enactment of  
Workers Compensation Legislation  
Amendment Act 2006**

**1 Bringing about common renewal date for group member's  
policies: section 175G**

- (1) Section 175G of this Act (Members of group to have policies with same scheme agent and common renewal date) does not apply to an employer that is a member of a group existing at the commencement of that section until one of the following events occurs:
- (a) one employer who is a member of the group obtains a policy of insurance for the first time,
  - (b) one employer who is a member of the group renews a policy of insurance.
- (2) At the time that an employer who is a member of a group obtains a policy of insurance for the first time, or renews a policy of insurance, as referred to in subclause (1), all other members of the group who have obtained and maintained policies of insurance must arrange for those policies to be altered, or transferred to another scheme agent, or both, so that all those members comply with section 175G of this Act.

**[10] Schedule 6, Part 20**

Insert at the end of clause 1 (1):

*Workers Compensation Legislation Amendment Act 2006*

## **Schedule 2 Amendment of Workplace Injury Management and Workers Compensation Act 1998 No 86**

(Section 4)

### **[1] Section 37 Definitions**

Insert in alphabetical order:

*Comcare employer* means an employer who:

- (a) is licensed under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* of the Commonwealth after a declaration of eligibility under that Part made on the basis that the employer is a corporation carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority, and
- (b) would otherwise be required:
  - (i) to obtain and maintain in force a policy of insurance pursuant to section 155 of the 1987 Act, or
  - (ii) to be licensed as a self-insurer.

### **[2] Section 37, definition of “deemed premium income”**

Insert “or Comcare employer” after “self-insurer” wherever occurring.

### **[3] Section 38 Assessment by Authority of amount to be contributed to Fund**

Omit “and self-insurers” wherever occurring from section 38 (c), (d) and (e).

Insert instead “, self-insurers and Comcare employers”.

### **[4] Section 39A**

Insert after section 39:

#### **39A Contributions to Fund by Comcare employers**

- (1) Each Comcare employer must pay the contributions prescribed by this section to the Authority for payment into the WorkCover Authority Fund.
- (2) The contribution to be paid by a Comcare employer, in respect of each financial year (being a financial year during the whole or part of which the person was a Comcare employer), is an amount equal to the percentage (determined by the Authority in accordance with this section) of the deemed premium income of

the Comcare employer during the relevant period when the person was a Comcare employer.

- (3) The percentage determined by the Authority pursuant to subsection (2):
- (a) subject to paragraph (b), is to be such as, in the opinion of the Authority, will be sufficient to yield the total amount to be contributed to the Fund by Comcare employers in respect of the relevant financial year as determined pursuant to section 38, and
  - (b) is to be 60%, or such other percentage (not exceeding 70%) as determined by the Authority by order, of the percentage determined in accordance with section 39, and
  - (c) is to be rounded to 2 decimal places, and
  - (d) is to be the same percentage for all Comcare employers.
- Example.** If the percentage determined in accordance with section 39 is 4%, unless an order under subsection (3) (b) has been made, the percentage under subsection (2) will be  $(60\% \times 4\% =) 2.40\%$ .  
If the percentage determined in accordance with section 39 is still 4%, but an order under subsection (3) (b) has been made increasing that percentage to 62.1%, then the percentage under subsection (2) will be  $(62.1\% \times 4\% = 2.484\%$ , then rounded to the nearest two decimal places) 2.48%.
- (4) A contribution by a Comcare employer is payable in such instalments and at such times as may be determined by the Authority and notified to the Comcare employer.
- (5) The Authority may, at any time during or after a financial year, re-determine the percentage determined pursuant to subsection (2) in respect of the financial year if the estimated total amount of premium income and deemed premium income for the financial year is less than the previously estimated amount on which the original determination of the percentage was based.
- (6) If a percentage is re-determined, the Authority is to make the necessary adjustments to the contributions payable by Comcare employers.
- (7) If a contribution payable by a Comcare employer has not been paid within the time prescribed by or under this section:
- (a) the Comcare employer is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
  - (b) the amount of that contribution together with a late payment fee calculated at the rate of 15% of that amount per annum compounded quarterly (or, where another rate

is prescribed, that other rate) may be recovered by the Authority as a debt in any court of competent jurisdiction.

- (8) Subject to subsection (3), more than one percentage may be determined by the Authority for different portions of a financial year for the purposes of subsection (2).
- (9) A certificate executed by the Authority as to the amount of a contribution payable under this section by a Comcare employer specified in the certificate and the due date for payment is (without proof of its execution by the Authority) admissible in proceedings under this section and is evidence of the matters specified in the certificate.
- (10) The obligation of a person (being a Comcare employer) to make a contribution under this section in respect of any period during which the person was a Comcare employer does not cease merely because the person subsequently ceases to be a Comcare employer.
- (11) This section does not apply to a Comcare employer on and from the date that the Comcare employer becomes subject to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* of the Commonwealth.

**[5] Section 44 Early notification of workplace injury**

Omit “The regulations under section 160 of the 1987 Act” from section 44 (5).

Insert instead “An insurance premiums order referred to in the definition of *prescribed excess amount* in section 160 (1) of the 1987 Act”.

**[6] Section 243 Disclosure of information**

Insert after section 243 (2) (a):

- (b) the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*, and

[Second reading speech made in—

Legislative Assembly on 28 March 2006

Legislative Council on 10 May 2006]

BY AUTHORITY