

Treasury and Finance Legislation Amendment Bill 2016

Introduction Print

EXPLANATORY MEMORANDUM

Clause Notes

Part 1—Preliminary

- Clause 1 sets out the purposes of the Bill, which are to amend the **Workplace Injury Rehabilitation and Compensation Act 2013**, the **Accident Compensation Act 1985** and the **Occupational Health and Safety Act 2004** to further improve the operation of those Acts.
- Clause 2 is the commencement provision. It provides that Parts 1, 4 and 5 come into operation on the day after the day on which it receives Royal Assent and Parts 2 and 3 are taken to have come into operation on 1 July 2014. These provisions apply retrospectively in order to amend provisions that were introduced on 1 July 2014 by the commencement of the **Workplace Injury Rehabilitation and Compensation Act 2013**. The same commencement has been applied to the equivalent section in the **Accident Compensation Act 1985** to align with the commencement of the **Workplace Injury Rehabilitation and Compensation Act 2013**. The retrospective application of these provisions will not adversely affect any person's existing benefits because they give effect to the intention of the legislation.

Part 2—Amendment to the Workplace Injury Rehabilitation and Compensation Act 2013

- Clause 3 under the **Workplace Injury Rehabilitation and Compensation Act 2013**, workers with the highest pre-injury earnings have their weekly payments capped at a statutory maximum. In order to ensure consistency in application, that statutory maximum is calculated by reference to the state average weekly earnings as published by the Australian Bureau of Statistics and then doubled. However, differences in the published figure from one year to the next could mean that some workers will receive weekly payments at a higher amount as compared to others, depending on the year in which they were injured. This arises where there is negative wage growth in Victoria in a particular financial year. Accordingly clause 3 amends section 159 of the **Workplace Injury Rehabilitation and Compensation Act 2013** to clarify that a reduction in figures for state average weekly earnings will not lead to different weekly payment amounts for these workers, based on the financial year in which they were injured. Workers injured in the previous financial year will continue to have their weekly payments preserved at the same level under the "no disadvantage rule". In addition, workers injured in the current financial year will have their weekly payments capped at the same level as workers who are already in receipt of weekly payments. This ensures consistency, transparency and equity in the payment of compensation for injured workers.

Part 3—Amendment to the Accident Compensation Act 1985

- Clause 4 makes an amendment to section 91EA of the **Accident Compensation Act 1985** equivalent to the amendment made by clause 3 to section 159 of the **Workplace Injury Rehabilitation and Compensation Act 2013**.

Part 4—Amendment to the Occupational Health and Safety Act 2004

- Clause 5 section 32 creates an offence where a person, including a body corporate, without lawful excuse, recklessly engages in conduct that places or may place a person who is at the workplace in danger of serious injury. The current maximum penalty for a

body corporate is 9000 penalty units, which equates to \$1 365 030. An example of an offence under section 32 is an employer failing to repair brakes on a truck that they know are faulty.

The offence of reckless endangerment requires a far greater degree of culpability than an offence against section 21, which requires an employer to provide and maintain a working environment that is safe and without risks to the health of their employees. To satisfy this duty, an employer is required to eliminate risks to health and safety, and if it is not reasonably practicable to eliminate those risks, to reduce the risks to health and safety so far as is reasonably practicable. Examples of offences under section 21 are failing to use adequate fall protection where there is risk of fall of more than 2 metres, or failing to install adequate guarding on a machine. Breach of this duty has the same maximum penalty of 9000 penalty units as the offence of reckless endangerment despite the fact the levels of culpability between the two offences are different. Clause 5 amends section 32 of the **Occupational Health and Safety Act 2004** to increase the maximum penalty for a body corporate found guilty of recklessly endangering the health or safety of a person to 20 000 penalty units to reflect the higher level of culpability for this offence.

Clause 6 under the Occupational Health and Safety Regulations 2007, a person must hold a licence to perform high risk work which arises when using certain types of plant, such as forklift trucks, cranes, scaffolding, pressure equipment and hoists. Under the Occupational Health and Safety Regulations 2007, WorkSafe can authorise a person to train applicants for high risk work licences and assess their competency. Training and assessment is generally undertaken by Registered Training Organisations who then advise WorkSafe whether or not a licence applicant meets the relevant level of competency. The **Occupational Health and Safety Act 2004** enables regulations to be made to authorise persons to provide training to high risk work licence applicants but does not specifically refer to the authorisation of people to assess the competency of those applicants. To better reflect the intention of the legislation, clause 6 amends section 158(1)(c) to clarify that regulations can be made under the **Occupational Health and Safety Act 2004** to enable people to be authorised as both trainers and assessors.

Part 5—Repeal of amending Act

Clause 7 provides that the Bill will be repealed on the first anniversary of the day on which all of its provisions have come into operation. The repeal of this Bill will not affect in any way the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).