

South Australia

**Workers Rehabilitation and Compensation
(Income Maintenance) Amendment Bill 2009**

A BILL FOR

An Act to amend the *Workers Rehabilitation and Compensation Act 1986*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Workers Rehabilitation and Compensation (Income Maintenance) Amendment Act 2009*.

5 2—Commencement

This Act will come into operation on 1 March 2010.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Workers Rehabilitation and Compensation Act 1986*

4—Amendment of section 4—Average weekly earnings

- 5 (1) Section 4(15)(b)—delete "prescribed amount" wherever occurring and substitute, in each case:

minimum remuneration standard

- (2) Section 4(16)—after paragraph (a) insert:

10 (ab) a reference to the minimum remuneration standard is a reference to the national minimum wage for an adult working ordinary hours applying under Part 2-6 of the *Fair Work Act 2009* of the Commonwealth at the relevant date, adjusted, if relevant, on a proportional basis to take into account any case where the worker was not in full-time employment over the period used to determine the average weekly earnings of the worker; and

5—Amendment of section 35—Preliminary

- 15 (1) Section 35(8)(a)—delete "13 weeks" and substitute:

52 weeks

- (2) Section 35(8)(b)—delete "13 weeks" and substitute:

52 weeks

- 20 (3) Section 35(8)(c)—delete paragraph (c)

6—Amendment of section 35A—Weekly payments over designated periods

- (1) Section 35A(2)(a)—delete "90%" and substitute:

80%

- (2) Section 35A(2)(b)—delete "90%" and substitute:

25 80%

- (3) Section 35A(3)—delete subsection (3)

- (4) Section 35A(4)(b)—delete "despite the disability" and substitute:

and that the Corporation can demonstrate is reasonably available to the worker in his or her particular circumstances

7—Amendment of section 35B—Weekly payments after expiry of designated periods—no work incapacity

- 30 (1) Section 35B(1)—delete "third" and substitute:

second

- (2) Section 35B(2)—delete "third" and substitute:

35 second

(3) Section 35B(4)—delete "third" and substitute:

second

(4) Section 35B(4)—delete "section 35A(3)" and substitute:

section 35A(2)

5 (5) Section 35B(5)—delete "third" and substitute:

second

8—Amendment of section 35C—Weekly payments after expiry of designated periods—current work capacity

(1) Section 35C(1)—delete "section 35A(3)(b)" and substitute:

10 section 35A(2)(b)

(2) Section 35C(1)—delete "third" and substitute:

second

(3) Section 35C(2)—delete subsection (2) and substitute:

15 (2) The Corporation is to determine that the worker's entitlement to weekly payments under this Division does not cease, as contemplated by subsection (1), if the Corporation is satisfied—

20 (a) that the worker is in employment and that because of the compensable disability the worker is incapable of undertaking further or additional employment or work which would increase the worker's current weekly earnings;
or

(b) that the worker is in employment and that the worker is taking reasonable steps to secure further or additional employment or work up to his or her level of work capacity.

25 (4) Section 35C(3)(b)—delete "subsection (2) on the ground that the Corporation is not satisfied under the requirements of that subsection" and substitute:

paragraph (a) of subsection (2) on the ground that the Corporation is not satisfied under the requirements of that paragraph

(5) Section 35C—after subsection (5) insert:

30 (6) Furthermore, the Corporation may not determine that a worker's entitlement to weekly payments under this Division will cease at the end of the designated entitlement period under section 35A or at the expiry of an entitlement under section 35B (as the case may be), including after taking into account the operation of a preceding subsection, unless or until the Corporation can demonstrate that it has—

35 (a) taken reasonable steps to find suitable employment for the worker over a reasonable period of time; and

- (b) taken reasonable steps to prepare the worker for a return to employment up to his or her level of work capacity (including, if relevant, by providing reasonable access to retraining).

5 **9—Amendment of section 36—Discontinuance of weekly payments**

- (1) Section 36(3a)(ba)—delete "or the second entitlement period"
- (2) Section 36(3a)(bb)—delete "third" and substitute:

second

- (3) Section 36(4) to (5c)—delete subsections (4) to (5c) (inclusive) and substitute:

10 (4) If a worker lodges a notice of dispute disputing a decision by the Corporation to discontinue or reduce weekly payments under this section within 1 month after the worker receives notice of the decision—

15 (a) the operation of the decision is suspended, and the weekly payments must continue or, if the decision has already taken effect, be reinstated (to their previous level), until the dispute first comes before a conciliator under Part 6A; and

20 (b) the Tribunal may further suspend the operation of the decision (from time to time) to allow a reasonable opportunity for resolution of the dispute by conciliation or judicial determination (as the case requires) without prejudice to the worker's financial position in the meantime.

25 (5) However, if the dispute is resolved by the Corporation's decision on reconsideration of the disputed decision, the suspension terminates at the end of the period allowed for the worker to express dissatisfaction with the result of the reconsideration.

30 (5a) If the dispute is ultimately resolved in favour of the Corporation, the Corporation may, at the Corporation's discretion (but subject to the regulations)—

 (a) recover amounts that were paid because of suspension of the operation of the Corporation's decision from the worker as a debt; or

 (b) set off the amounts against liabilities of the Corporation to make payments to the worker under this Act.

- 35 (4) Section 36(15) to (17)—delete subsections (15) to (17) (inclusive)

10—Amendment of section 43—Lump sum compensation

Section 43(4)—delete subsection (4)

11—Amendment of section 43A—Assessment of impairment

Section 43A(4)—after paragraph (c) insert:

- 5 (ca) must provide a worker with an opportunity to choose a medical practitioner to undertake any assessment of impairment from a panel of at least 3 medical practitioners who hold an accreditation for the purposes of this section; and

Schedule 1—Transitional provisions

1—Interpretation

In this Schedule—

10 *principal Act* means the *Workers Rehabilitation and Compensation Act 1986*;

relevant day means the day on which this Act comes into operation.

2—Weekly payments

- (1) The amendments effected by sections 4 to 8 (inclusive) apply to workers who suffer compensable disabilities on or after the relevant day.

- 15 (2) In addition, the amendments effected by those sections extend to workers who suffered compensable disabilities on or after 1 July 2008 so as to increase any entitlement to weekly payments under the principal Act from the relevant day to the extent provided by those amendments (but not so as to provide for any retrospective entitlement).

3—Discontinuance of weekly payments

20 The amendments effected by section 9 of this Act apply in relation to any discontinuance or reduction of weekly payments effected by a notice of the *WorkCover Corporation of South Australia* given to a worker under section 36(3) of the principal Act on or after the relevant day.

4—Lump sum compensation

25 The amendment effected by section 10 of this Act applies to workers who suffer compensable disabilities on or after the relevant day.

5—Assessment of impairment

30 The amendment effected by section 11 of this Act applies in relation to any assessment of impairment initiated by the *WorkCover Corporation of South Australia* at any time after the expiration of 1 month from the relevant day.