

c2024-183B  
GRNS--The Greens

LEGISLATIVE COUNCIL

**State Insurance and Care Governance Amendment (Governance Arrangements) Bill 2024**

First print

Proposed amendments

No. 1 **Pre-injury average weekly earnings**

Page 5. Insert after line 7—

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

**Section 43 Work capacity decisions by insurers**

Omit “pre-injury average weekly earnings or” from section 43(1)(d).

No. 2 **Death benefit disputes**

Page 5. Insert after line 7—

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

[1] **Part 3, Division 1A**

Insert after Division 1—

**Division 1A Compensation payable on death—death benefit  
disputes**

**32AA Definitions**

- (1) In this division—  
***death benefit dispute*** means a dispute about liability for death benefit compensation that has been referred for determination by the Commission.
- (2) For the purposes of determining whether a person is a dependant of a deceased person under this division—
  - (a) the deceased person is taken to be a worker, and
  - (b) the death of the person is taken to have resulted from an injury.

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**Note**— See the *Workplace Injury Management and Workers Compensation Act 1998*, section 4, definition of **dependants**.

**32AB Application**

- (1) This division applies to a claim for death benefit compensation that is the subject of a death benefit dispute.
- (2) This division has effect despite the 1998 Act, section 234.

**32AC Settlement of claim where liability disputed**

- (1) A party to a death benefit dispute may lodge with the Commission a proposed agreement for an amount to be paid in settlement of the part of the claim that relates to the lump sum death benefit under Division 1.
- (2) The amount proposed to be paid in settlement must not be more than the amount of the lump sum death benefit otherwise payable under Division 1.
- (3) The parties to the agreement must include the insurer and—
  - (a) each dependant of the deceased person, or
  - (b) if there are no dependants—the legal personal representative of the deceased person.
- (4) The Commission must not entertain proceedings to give effect to the agreement unless satisfied that—
  - (a) there is a reasonable basis for the insurer to dispute liability for the death benefit compensation, and
  - (b) the amount of compensation proposed to be paid in settlement of the claim is reasonable in the circumstances, and
  - (c) each dependant of the deceased person is a party to the agreement or, if the Commission is satisfied there are no dependants, the legal personal representative of the deceased person is a party to the agreement.
- (5) There is a reasonable basis for an insurer to dispute liability only if the dispute is based on facts provable on the material available to the Commission and a reasonably arguable view of the law.
- (6) In proceedings for the death benefit dispute, each party to the agreement must be represented by an Australian legal practitioner unless otherwise directed by the Commission.
- (7) If the Commission makes a determination to give effect to an agreement under this division—
  - (a) the insurer is taken to have accepted liability for death benefit compensation for the death, and
  - (b) subject to paragraph (c), death benefit compensation is payable in accordance with Division 1 as if the death had resulted from an injury, and
  - (c) the amount of lump sum death benefit payable under section 25 is the amount provided by the agreement as executed.
- (8) The Workers Compensation Guidelines may make provision in relation to the management of a claim to which an agreement under this division relates.
- (9) The Commission rules may make provision for or in relation to applications under this section and the procedure for making a determination to give effect to an agreement under this division.

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

Insert before Part 20, with appropriate Part numbering—

**Part Provisions consequent on State Insurance and Care Governance Amendment (Governance Arrangements) Act 2024**

**1 Definition**

In this clause—

*2024 amending Act* means the *State Insurance and Care Governance Amendment (Governance Arrangements) Act 2024*.

**2 Application of amendments to Workers' Compensation (Dust Diseases) Act 1942**

An amendment made by the 2024 amending Act does not apply for the purposes of the *Workers' Compensation (Dust Diseases) Act 1942*.

**3 Death benefit disputes**

The amendment made by the 2024 amending Act to insert Part 3, Division 1A into the 1987 Act does not apply—

- (a) to a death occurring before 1 August 2015, or
- (b) for the purposes of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

No. 3 **Long title**

Insert “; and to amend the *Workers Compensation Act 1987* in relation to work capacity decisions and death benefit disputes” after “NSW”.