

TASMANIA

**WORKERS REHABILITATION AND
COMPENSATION AMENDMENT BILL 2012**

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WORKERS REHABILITATION AND COMPENSATION AMENDMENT BILL 2012

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
22 November 2012

*(Brought in by the Minister for Workplace Relations, the
Honourable David James O'Byrne)*

A BILL FOR

An Act to amend the *Workers Rehabilitation and Compensation Act 1988*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Workers Rehabilitation and Compensation Amendment Act 2012*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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3. Principal Act

In this Act, the *Workers Rehabilitation and Compensation Act 1988** is referred to as the Principal Act.

4. Section 4 amended (Application of Act)

Section 4(5) of the Principal Act is amended by omitting paragraph (c).

5. Section 4AA inserted

After section 4 of the Principal Act, the following section is inserted in Part I:

4AA. Services of domestic or personal nature

- (1) A person who is, by virtue only of section 4B or 4BA, employed by another person to provide services –
- (a) to the other person at a residence occupied by the other person; and
 - (b) that are services of a domestic or personal nature; and
 - (c) that are not provided, in any week, for more than 8 hours –

is not to be taken for the purposes of this Act, while so employed, to be a worker employed by the other person.

*No. 4 of 1988

(2) In this section –

services of a domestic or personal nature means services –

- (a) provided in relation to a private residence and consisting of cooking, cleaning, gardening or other work of a domestic nature; or
- (b) consisting of the provision of care, supervision, or education, to a child; or
- (c) consisting of the provision of assistance in the maintenance, care or enhancement of a person's body or the provision of companionship to the person.

6. Section 4B substituted

Section 4B of the Principal Act is repealed and the following sections are substituted:

4B. Employment-like relationships

- (1) Where a person (*the contractor*) is engaged under a contract with another person that results in a legal obligation

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on the other person to make superannuation contributions in respect of the contractor, the contractor is to be taken for the purposes of this Act, while so engaged, to be a worker employed by the other person.

- (2) Where a person (*the contractor*) –
- (a) makes a contract with another person for the contractor to perform work; and
 - (b) is wholly or principally remunerated under the contract for his or her personal labour and skills; and
 - (c) is not engaged under the contract to achieve a specific result; and
 - (d) must personally perform the work under the contract and cannot delegate the work to another person he or she employs, engages or contracts with –

the contractor is to be taken for the purposes of this Act, while so engaged under the contract, to be a worker employed by the other person.

- (3) In determining whether subsection (2) applies in relation to a person who is a contractor under that subsection, the fact that the contractor, or a business or firm of the contractor, has been assigned an

Australian Business Number is not to be taken into account.

- (4) Section 4(5)(a) does not apply to, or in relation to, a person who is a contractor under this section, while the person is engaged under the contract in relation to which the person is such a contractor.

4BA. Contractors under labour hire arrangements

- (1) Where –

- (a) a person (*the contractor*) has been engaged by another person (*the labour hirer*) under a contract for services to perform work for someone other than the labour hirer; and
- (b) there is no contract to perform the work between the contractor and the person for whom the work is to be performed; and
- (c) the contractor does all or part of the work personally; and
- (d) if the labour hirer is a corporation, the contractor is not an officer, within the meaning of section 9 of the Corporations Act, of the corporation –

the contractor is to be taken for the purposes of this Act, while so engaged,

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to be a worker employed by the labour hirer.

- (2) In determining whether subsection (1) applies in relation to a person who is a contractor under that subsection, the fact that the contractor, or a business or firm of the contractor, has been assigned an Australian Business Number is not to be taken into account.
- (3) Section 4(5)(a) does not apply to, or in relation to, a person who is a contractor under subsection (1), while the person is engaged under the contract in relation to which the person is such a contractor.

7. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.