

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Brendan Smyth)

Insurance Compensation Framework Bill 2002

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Dictionary	2
4 Notes	2
Part 2	
Object, application and important concepts	
5 Object of Act	3
6 Application of Act	3
7 Meaning of <i>injury</i>	3

Contents

	Page
8 What are <i>commercial premises</i> ?	3
9 Meaning of <i>business operator</i>	4
10 Meaning of <i>insurer</i>	5
11 Meaning of <i>awe indexed</i> and <i>cpi indexed</i>	5
12 Totally incapacity	6
13 Meaning of <i>partially incapacitated</i>	7
 Part 3 Requirement to maintain compulsory insurance policy	
14 Meaning of <i>compulsory insurance policy</i>	8
15 Compulsory insurance—business operators	9
16 Effect of failure to maintain compulsory insurance on other insurance etc for this Act	9
17 Nominal insurer entitled to triple premiums	10
18 Evidence of maintenance of compulsory insurance policy	10
19 Self-insurers	10
 Part 4 Entitlement to compensation for personal injury	
20 General entitlement to compensation for personal injury on commercial premises	11
21 Amounts of compensation under Act cumulative	12
22 Payments to people with legal disabilities	12
23 Contribution by person other than business operator	12
24 Working out average pre-incapacity weekly earnings for non-contractor	13
25 Working out average pre-incapacity weekly earnings for contractor	13
26 Working out average pre-incapacity weekly hours for non-contractor	14
27 Working out average pre-incapacity weekly hours for contractor	14
28 Overtime—hours and wages	15
29 Gradual onset of incapacity	15

		Page
Part 5	Exceptions to entitlements to compensation	
30	When is compensation under Act generally not payable?	16
31	No compensation while imprisoned	16
32	Compensation for sporting injuries	17
Part 6	Weekly compensation	
33	What if injured person dead?	18
34	When do weekly compensation payments begin?	18
35	Totally incapacitated people	18
36	Partially incapacitated people up to 26 weeks after incapacity date	20
37	Partially incapacitated people after 26 weeks after incapacity date	20
38	Stopping of payments for partial incapacity	22
39	Effect on payment period of loss of entitlement to weekly compensation	22
40	Living outside Australia	23
41	Effect of living outside Australia if compensation still payable	23
42	Effect of payment of weekly compensation on other benefits etc	24
43	No assignment etc of weekly compensation	24
Part 7	Compensation for permanent injuries	
44	Meaning of <i>loss</i> for pt 7	25
45	Meaning of <i>single loss amount</i>	25
46	Meaning of <i>maximum loss amount</i>	25
47	Compensation for permanent injuries generally	26
48	Compensation for 2 or more losses	26
49	Compensation and left-handedness	27
50	Compensation for combination of items	27
51	Compensation for only arm, leg, hand or foot	28
52	Compensation for loss of sexual organs	28
53	Loss of bowel function	28
54	Proportionate loss of use	28
55	Special provisions for HIV/AIDS	29

Contents

	Page
56 Deduction for previous injury or pre-existing condition	29
57 Further loss and deductible proportions	30
58 Reimbursement for costs of medical certificate and examination	30
59 Limited entitlement if death happens within 3 months	31
Part 8 Compensation for medical treatment, damage and other costs	
60 Application of pt 8	32
61 Business operator's liability for medical treatment and damage	32
62 Claim for compensation for pt 8	34
63 Second assessments	34
64 Payments for treatment received from hospital	34
65 Transport costs other than private car	35
66 Working out transport costs for private cars	36
67 Costs of accommodation and meals	36
Part 9 Compensation for death	
68 Death benefits	38
69 Payment into court of lump sum death benefits	39
Part 10 Registration of agreements for compensation	
70 Registration of agreements for compensation	40
71 Effect of registration of agreements	40
72 Cancellation or amendment of registered agreements	41
Part 11 Injury management process	
Division 11.1 Object and definitions for part 11	
73 Object of pt 11	42
74 Definitions for pt 11	42
Division 11.2 General obligations	
75 Insurer to establish etc injury management program	43
76 Insurer to give effect to injury management program	43
77 Insurer's obligation of prompt payment	44

	Page
78 Insured person's obligations for injury management programs	44
79 Register of injuries	44
Division 11.3 Obligations on injury	
80 Early notification of injury	45
81 Injured person's injury notice	45
82 Business operator's injury notice	46
83 What if business operator does not give business operator's injury notice within time?	46
84 Obligation of insurer on being notified of injury	47
Division 1.4 Obligations in relation to personal injury plans	
85 Personal injury plan for person with significant injury	47
86 Provision of information about personal injury plan	48
87 Vocational rehabilitation	48
88 Injured person's personal injury plan obligations	48
89 Nomination of doctor for personal injury plan	49
90 Subsequent medical certificates under personal injury plan	49
91 Payment of cost of treatment of injured person	49
Division 1.5 Other obligations	
92 If injured person was employed	50
93 Payment of cost of treatment of injured person	51
Division 1.6 Compliance with part 11	
94 Obligation of Minister to monitor compliance	52
95 Compliance by insurers with pt 11	52
96 Compliance by injured people with pt 11	52
97 Unreasonableness in stopping payment	52
98 Liability not affected by injury management program etc	53
Part 12 Claims	
Division 12.1 Making claims	
99 Making claim for compensation	54
100 Claim for property loss or damage	54
101 No requirement to give information or material more than once	54
102 Time for taking proceedings generally	54

Contents

	Page
103 Time for making claim under pt 7	55
104 When is a claim made?	55
105 No notice or defective or inaccurate notice	56
106 Admissibility of statements by injured people	56
107 Action by business operator in relation to claims	56
Division 12.2 Time for accepting or rejecting claims	
108 Meaning of <i>given</i> to insurer for div 12.2	57
109 Claim accepted if not rejected within 28 days	58
110 Rejecting claims generally	58
111 Rejecting claim within 28 days	59
112 Rejecting claims after 28 days but within 1 year	59
113 Rejecting claims from 1 year	59
Division 12.3 Liability on claims	
114 Without prejudice payments	60
115 Liability on claim not accepted or rejected	61
116 Order for refund of overpayments of compensation	61
Division 12.4 Settlement of claims	
117 Contracting out	62
118 How injured person may commute rights	62
119 No assignment etc of payout of weekly compensation	63
Part 13 Vocational rehabilitation	
120 Meaning of <i>approved rehabilitation provider</i> etc	64
121 Meaning of <i>vocational rehabilitation</i> for pt 13	64
122 Meaning of <i>protocol</i> for pt 13 etc	65
123 Vocational rehabilitation	65
124 False representation of approval	65
Part 14	
Insurance	
125 Approved insurers	66
126 Effect of revocation or suspension of approval	66
127 Compulsory insurance—insurers	67

	Page
128 Cancellation	67
129 Cover notes	68
130 Provision of information to Minister	68
Part 15 The nominal insurer	
131 Appointment of nominal insurer	70
132 Claims for payment by nominal insurer if liability agreed or established	70
133 Claims for payment by nominal insurer after final judgment	71
134 Claims for payment by nominal insurer if default on agreement	72
135 Timing of claims under pt 15	72
136 Payments by nominal insurer	72
137 Reopening agreements and awards	73
138 Deciding or redeciding claim	73
139 Power of Supreme Court to set aside certain agreements	74
140 Costs in proceeding set aside	75
141 Set aside agreements and limitation laws	75
142 Set aside agreements and further action	75
143 Agreement of defendant to certain action by nominal insurer	76
144 Intervention by nominal insurer	76
145 Nominal insurer may act	77
146 Effects of payment by nominal insurer	77
147 Funds for payments by nominal insurer	78
148 Apportionment of liability of nominal insurer	78
149 Information and assistance by business operator to nominal insurer	79
150 Proceedings to be in name of 'Nominal Insurer'	80
Part 16 Compensation and common law remedies	
151 Definitions for pt 16	81
152 References to person who recovers damage etc	81
153 Payments by nominal insurer	81
154 Remedies both against business operator and stranger	82
155 Liability arising independently of Act	83

Contents

		Page
156	Dependants recovering damages and not claiming compensation	84
157	Discharge of liability out of payments into court	85
Part 17	Procedure for payment of compensation	
158	Conciliation and arbitration	87
159	Admissibility of statements by injured people	87
160	Appeals	87
Part 18	Review of decisions by administrative appeals tribunal	
161	Notice of reviewable decisions to be given to affected people	88
162	Review by administrative appeals tribunal of reviewable decisions	88
Part 19	Temporary provisions for acts of terrorism	
163	Application of pt 19 to insurers	89
164	Definitions for pt 19	90
165	Meaning of <i>act of terrorism</i> for pt 19	90
166	Terrorism cover temporary reinsurance fund	91
167	Entitlement of insurers to reimbursement from temporary fund	92
168	Payments out of temporary fund	93
169	Regulations about temporary fund	93
170	Exclusion of Corporations legislation	94
171	Expiry of pt 19	94
Part 20	Miscellaneous	
172	Premiums—maximum rates	95
173	Injured peoples' rights to information	95
174	Confidentiality	96
175	Medical referees	96
176	Time for beginning prosecutions for certain offences	97
177	False claims etc	97
178	Acts and omissions of representatives	98
179	Criminal liability of executive officers of corporation	99

	Contents
	Page
180 Rules of court	100
181 Directions about procedure	100
182 Funds for administration of Act	100
183 Determination of fees	101
184 Approved forms	101
185 Regulation-making power	102
 Schedule 1 Compensation for permanent injuries	 104
 Dictionary	 107

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Brendan Smyth)

Insurance Compensation Framework Bill 2002

A Bill for

An Act to create a system for dealing with public liability in relation to commercial premises that addresses the current crisis in public liability in the ACT, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Insurance Compensation Framework Act 2002*.

4 **2 Commencement**

5 This Act commences on 1 October 2002.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see *Legislation Act 2001*, s 75).

8 **3 Dictionary**

9 The dictionary at the end of this Act is part of this Act.

10 *Note 1* The dictionary at the end of this Act defines certain words and
11 expressions used in this Act, and includes references (*signpost*
12 *definitions*) to other words and expressions defined elsewhere in this
13 Act or in other legislation.

14 For example, the signpost definition '*compulsory insurance*
15 *policy*—see section 14.' means that the expression 'compulsory
16 insurance policy' is defined in that section.

17 *Note 2* A definition in the dictionary (including a signpost definition) applies to
18 the entire Act unless the definition, or another provision of the Act,
19 provides otherwise or the contrary intention otherwise appears (see
20 *Legislation Act 2001*, s 155 and s 156 (1)).

21 **4 Notes**

22 A note included in this Act is explanatory and is not part of this Act.

23 *Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of
24 notes.

1 **Part 2** **Object, application and**
2 **important concepts**

3 **5 Object of Act**

4 The object of this Act is to provide a system that focuses on
5 rehabilitating people who are injured on commercial premises in the
6 ACT and providing an assured outcome for those people and for
7 insurers covering public liability risk for commercial premises in the
8 ACT.

9 **6 Application of Act**

10 (1) This Act applies to injuries that happen on commercial premises in
11 the ACT after this Act commences.

12 (2) This Act does not apply to an injury—

13 (a) to which the *Workers Compensation Act 1951* applies; or

14 (b) covered by a third-party policy under the *Road Transport*
15 *(General) Act 1999*, part 10 (Compulsory vehicle insurance).

16 **7 Meaning of *injury***

17 In this Act:

18 *injury* means a physical or mental injury (including stress), and
19 includes aggravation, acceleration or recurrence of a pre-existing
20 injury.

21 **8 What are *commercial premises*?**

22 (1) In this Act:

23 *commercial premises* are premises, or part of premises, at which a
24 business is ordinarily operated.

1 (2) ***Commercial premises*** also include the following premises:

- 2 (a) a school or other educational facility;
3 (b) a place of worship;
4 (c) a shopping centre;
5 (d) a hospital or other medical facility;
6 (e) a sports ground.

7 **9 Meaning of *business operator***

8 (1) In this Act:

9 ***business operator*** means a person who operates a business at
10 commercial premises in the ACT.

11 (2) Also, ***business operator***, in relation to a compensable injury, means
12 the person who operates the business at the premises where the
13 injury happened.

14 (3) ***Business operator*** also includes a person who operates the
15 following:

- 16 (a) a school or other educational facility;
17 (b) a place of worship;
18 (c) a shopping centre;
19 (d) a hospital or other medical facility;
20 (e) a sports ground.

1 **10 Meaning of *insurer***

2 In this Act:

3 ***insurer***, in relation to an injury, means—

- 4 (a) the approved insurer of the business operator for the injury; or
- 5 (b) if the business operator for the injury was a self-insurer when
- 6 the injury happened—the business operator ; or
- 7 (c) if, when the injury happened, the business operator for the
- 8 injury was not a self-insurer and has or had no compulsory
- 9 insurance policy that applies to the injury—the nominal
- 10 insurer.

11 **11 Meaning of *awe indexed* and *cpi indexed***

12 (1) In this Act:

13 ***awe indexed***, for an amount, means the amount as adjusted in line

14 with any adjustment in the AWE after the commencement of the

15 provision in which the amount appears.

16 ***CPI*** means the All Groups Consumer Price Index (Canberra) issued

17 by the ABS.

18 *Note* In June 2001, this was series 6401.0.

19 ***cpi indexed***, for an amount, means the amount as adjusted in line

20 with any adjustment in the CPI since the commencement of the

21 provision in which the amount appears.

22 *Note* ***AWE*** and ***ABS*** are defined in the dict.

23 (2) However, if an amount to be awe indexed or cpi indexed would, if

24 adjusted in line with the adjustment (the ***negative adjustment***) to the

25 AWE or CPI, become smaller, the amount is not reduced in line

26 with the negative adjustment.

Section 12

1 (3) An amount that, in accordance with subsection (2), is not reduced
2 may be increased in line with an adjustment in the AWE or CPI that
3 would increase the amount only to the extent that the increase, or
4 part of the increase, is not one that would cancel out the effect of the
5 negative adjustment.

6 (4) Subsection (3) does not apply to a negative adjustment once the
7 effect of the negative adjustment has been offset against an increase
8 in line with an adjustment in the AWE or CPI.

9 **Example of adjustments**

10 An amount in a section is \$100 cpi indexed.

11 There is a 20% increase in the CPI after the section commences. The amount in
12 the section becomes \$120 (100 + 20%).

13 There is then a 10% drop in the CPI. The amount does not change from \$120
14 (although if it had changed it would be \$108).

15 There is a 20% increase in the CPI. The 20% increase is not to the \$120, but to the
16 \$108. $108 + 20\% = 129.60$. So the \$120 becomes \$129.60. This is the amount
17 (\$120) increased by so much of the 20% increase that did not cancel out the effect
18 of the adjustment down to \$108.

19 *Note* An example is part of the Act, is not exhaustive and may extend, but
20 does not limit, the meaning of the provision in which it appears (see
21 *Legislation Act 2001*, s 126 and s 132).

22 **12 Totally incapacity**

23 (1) For this Act, an injured person is ***totally incapacitated*** for work if—

24 (a) there is no suitable paid employment reasonably available to
25 the person that the person can do because of a functional
26 impairment caused by the injury; or

27 (b) the person is taken to be totally incapacitated under
28 subsection (2).

29 (2) For this Act, an injured person is taken to be ***totally incapacitated***
30 for work if—

31 (a) a doctor certifies that the injured person is partially
32 incapacitated for work; and

1 (b) the partial incapacity prevents the injured person from
2 performing the work the injured person performed before
3 becoming incapacitated; and

4 (c) the worker cannot find appropriate alternative employment.

5 **13 Meaning of *partially incapacitated***

6 For this Act, an injured person is *partially incapacitated* for work if,
7 because of a functional impairment caused by the injury, the
8 person—

9 (a) cannot do all the work the person could do before the injury;
10 but

11 (b) is not totally incapacitated.

1 **Part 3** **Requirement to maintain**
2 **compulsory insurance policy**

3 **14** **Meaning of *compulsory insurance policy***

4 (1) In this Act:

5 *compulsory insurance policy*, for a business operator, means an
6 insurance policy—

7 (a) for an unlimited amount for any liability of the business
8 operator under this Act, for an injury to, or the death of, a
9 person on premises at which the business operator operates a
10 business; and

11 (b) that complies with this Act.

12 *Note* If a form is approved under s 184 (Approved forms) for a compulsory
13 insurance policy, the form must be used.

14 (2) A cover note may be a compulsory insurance policy only if it is in
15 force for not longer than 30 days and—

16 (a) the business operator maintained a compulsory insurance
17 policy (other than a cover note) immediately before
18 maintaining the cover note; or

19 (b) the business operator was not a business operator immediately
20 before beginning to maintain the cover note; or

21 (c) the business operator was a self-insurer immediately before
22 beginning to maintain the cover note.

1 **15 Compulsory insurance—business operators**

2 (1) A business operator , other than a self-insurer, must maintain a
3 compulsory insurance policy with an approved insurer.

4 Maximum penalty:

5 (a) for a 1st offence—50 penalty units; or

6 (b) for a 2nd or subsequent offence—

7 (i) if the person charged is an individual—250 penalty units,
8 imprisonment for 2 years or both; or

9 (ii) if the person charged is a corporation—1 000 penalty
10 units.

11 (2) If 2 or more business operators could become liable to pay
12 compensation in relation to the same premises, any of the business
13 operators may comply with subsection (1) in relation to the premises
14 with a joint insurance policy for their joint liability.

15 **16 Effect of failure to maintain compulsory insurance on**
16 **other insurance etc for this Act**

17 (1) This section applies if—

18 (a) a business operator , other than a self-insurer, fails to maintain
19 a compulsory insurance policy; but

20 (b) the business operator maintains an insurance policy (the *other*
21 *policy*) for a liability under this Act.

22 (2) The failure to maintain a compulsory insurance policy does not—

23 (a) annul the other policy; or

24 (b) affect the liability of the insurer under the other policy; or

25 (c) affect the liability of the insurer under section 147 (Funds for
26 payments by nominal insurer).

1 **17 Nominal insurer entitled to triple premiums**

2 If a business operator , other than a self-insurer, fails to maintain a
3 compulsory insurance policy, the nominal insurer may recover as a
4 debt from the business operator an amount equal to triple the
5 amount of the premiums that would have been payable to an
6 approved insurer if the business operator had maintained a
7 compulsory insurance policy.

8 **18 Evidence of maintenance of compulsory insurance policy**

9 A statement in an information against a business operator that there
10 was no compulsory insurance policy issued by an approved insurer
11 in favour of the business operator in force on a stated date, or during
12 a stated period, is evidence of the matter.

13 **19 Self-insurers**

- 14 (1) The Minister may, by written notice given to a business operator ,
15 exempt the business operator from complying with section 15 (1)
16 (Compulsory insurance—business operators) for a stated period.
- 17 (2) The regulations may make provision in relation to the following:
- 18 (a) how a business operator may apply for an exemption;
- 19 (b) the criteria to be considered by the Minister when deciding
20 whether to exempt a business operator;
- 21 (c) conditions on exemptions;
- 22 (d) renewals of exemptions;
- 23 (e) revocation and suspension of exemptions.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

3
4

- 5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 **21 Amounts of compensation under Act cumulative**

2 An amount of compensation payable under a provision of this Act in
3 relation to an injury is, unless otherwise expressly stated, in addition
4 to any amount of compensation paid or payable under any other
5 provision of this Act.

6 **22 Payments to people with legal disabilities**

7 (1) If compensation under this Act is payable to someone with a legal
8 disability, the Magistrates Court may make any order about the
9 payment of the compensation that it considers appropriate to protect
10 the person or the person's interests.

11 (2) In this section:

12 *person with a mental disability* means a person who is not legally
13 competent to conduct the person's legal affairs because of a mental
14 disability, whether or not a guardian has not been appointed for the
15 person under the *Guardianship and Management of Property Act*
16 1991.

17 *someone with a legal disability* means someone who is—

18 (a) a child; or

19 (b) a person with a mental disability.

20 **23 Contribution by person other than business operator**

21 (1) This Act does not stop the business operator for an injury from
22 claiming contribution from another person in relation to the injury.

23 (2) However, the business operator is not entitled to withhold any
24 compensation the business operator is liable to pay under this Act
25 because someone else is liable to pay compensation, unless the other
26 person has paid the compensation in relation to the injury.

24 Working out average pre-incapacity weekly earnings for non-contractor

(1) In working out average pre-incapacity weekly earnings for an injured person who is not a contractor—

(a) if the person was, immediately before the injury, employed by 2 or more employers—the person's earnings from all employment must be taken into account; and

(b) the actual weekly earnings of the person may be taken into account over—

(i) a period of 1 year before the injury; or

(ii) if the person has not been employed for 1 year—the period of employment.

(2) However, if it is not possible to work out fair average pre-incapacity weekly earnings for the injured person under subsection (1) because the person has only been employed for a short time, because of the terms of the person's employment or for some other reason, the person's average pre-incapacity weekly earnings may be worked out by reference to the average weekly amount being earned by—

(a) others in the same employment who perform similar work at the same grade as the person; or

(b) if there is no-one mentioned in paragraph (a) in the same employment—others in the same class of employment as the person, who perform similar work at the same grade as the person.

25 Working out average pre-incapacity weekly earnings for contractor

In working out average pre-incapacity weekly earnings for an injured person who is a contractor, the person's average pre-incapacity weekly earnings are to be worked out—

(a) as if the person were an employee; and

- 1 (b) if there is an award or industrial agreement applying to the
2 class and grade of work in which the person was engaged—by
3 reference to the award or industrial agreement.

4 **26 Working out average pre-incapacity weekly hours for**
5 **non-contractor**

- 6 (1) In working out average pre-incapacity weekly hours for an injured
7 person who is not a contractor—
8 (a) if the person was, immediately before the injury, employed by
9 2 or more employers—the person's work hours from all
10 employment must be taken into account; and
11 (b) the actual weekly work hours of the person over a period of up
12 to 1 year before the injury may be taken into account.
13 (2) However, if it is not possible to work out fair average pre-incapacity
14 weekly hours for the injured person under subsection (1) because
15 the person has only been employed for a short time, because of the
16 terms of the person's employment or for some other reason, the
17 person's average pre-incapacity weekly hours may be worked out by
18 reference to the average weekly hours being worked by—
19 (a) others in the same employment who perform similar work at
20 the same grade as the person; or
21 (b) if there is no-one mentioned in paragraph (a) in the same
22 employment—others in the same class of employment as the
23 person, who perform similar work at the same grade as the
24 person.

25 **27 Working out average pre-incapacity weekly hours for**
26 **contractor**

- 27 In working out average pre-incapacity weekly hours for an injured
28 person who is a contractor, the person's average pre-incapacity
29 weekly hours are to be worked out as if the person were an
30 employee.

1 **28 Overtime—hours and wages**

- 2 (1) This section applies to a component of the injured person's earnings
3 or hours attributable to overtime.
- 4 (2) The overtime is to be taken into account in working out average
5 pre-incapacity weekly earnings or average pre-incapacity weekly
6 hours only if—
- 7 (a) the injured person worked overtime in accordance with a
8 regular and established pattern; and
- 9 (b) the pattern was substantially uniform as to the number of hours
10 of overtime worked; and
- 11 (c) the person would have continued to work overtime in
12 accordance with the established pattern if the person had not
13 been injured.

14 **29 Gradual onset of incapacity**

- 15 (1) This section applies if, because of the gradual onset of an injured
16 person's injury, it appears that the level of the person's average
17 pre-incapacity weekly earnings, or average pre-incapacity weekly
18 hours, have been affected.
- 19 (2) The injured person's average pre-incapacity weekly earnings, or
20 average pre-incapacity weekly hours, must be set at an amount that
21 fairly represents the weekly amount that the person would have been
22 earning or working if the level had not been affected.

- 1 **Part 5** **Exceptions to entitlements to**
2 **compensation**
- 3 **30 When is compensation under Act generally not payable?**
- 4 (1) This section applies if, apart from this section, compensation in
5 relation to an injured person's injury is payable under this Act.
- 6 (2) Compensation is not payable if the injury to, or death of, the injured
7 person is caused by an intentionally self-inflicted injury.
- 8 (3) Compensation is not payable if it is proved that the injury is
9 attributable to the injured person's serious and wilful misconduct.
- 10 (4) In subsection (3), the personal injury received by the injured person
11 is attributable to the person's serious and wilful misconduct if—
- 12 (a) at the time of the injury, the person was under the influence of
13 alcohol or another drug, unless the alcohol or other drug did
14 not contribute to the injury or was not consumed or taken
15 voluntarily; or
- 16 (b) the injury was otherwise attributable to the person's serious
17 and wilful misconduct.
- 18 (5) In this section:
- 19 *drug*—see the *Road Transport (Alcohol and Drugs) Act 1977*,
20 dictionary.
- 21 **31 No compensation while imprisoned**
- 22 An injured person who is otherwise entitled to compensation under
23 this Act is not entitled to compensation for a period when the person
24 is imprisoned because the person has been convicted of an offence
25 against a law of the Territory, the Commonwealth, a State or another
26 Territory.

1 **32 Compensation for sporting injuries**

2 A person is not entitled to receive compensation for an injury
3 sustained because of his or her engagement in professional sporting
4 activity.

Part 6 Weekly compensation

33 What if injured person dead?

- (1) An injured person is not entitled to weekly compensation if the person is dead.
- (2) However, this section does not affect an entitlement to weekly compensation that accrued before the person's death.

34 When do weekly compensation payments begin?

- (1) If the injured person is, or may be, entitled to compensation for a compensable injury—
 - (a) the payment of weekly compensation must begin when the person gives notice of the injury to the business operator ; and
 - (b) the person is entitled to weekly compensation from the date of the injury.

35 Totally incapacitated people

- (1) This section applies if—
 - (a) an injured person is totally incapacitated because of a compensable injury; and
 - (b) immediately before the injury, the person was in paid employment.
- (2) For 26 weeks after the incapacity date, the injured person is entitled to receive weekly compensation equal to the person's average pre-incapacity weekly earnings.

Note **Incapacity date** is defined in the dict.

-
- 1 (3) After the 26 weeks, the injured person is entitled to receive weekly
2 compensation equal to—
- 3 (a) if 100% of the person's average pre-incapacity weekly
4 earnings is less than the pre-incapacity floor for the
5 person—100% of the person's average pre-incapacity weekly
6 earnings; or
- 7 (b) if 100% of the person's average pre-incapacity weekly
8 earnings is more, but 65% of those earnings is less, than the
9 pre-incapacity floor for the person—the statutory floor; or
- 10 *Note* *Statutory floor* is defined in the dict.
- 11 (c) if 65% of the person's average pre-incapacity weekly earnings
12 is more than the pre-incapacity floor for the
13 person—whichever of following is (at the time of payment)
14 more:
- 15 (i) 65% of the person's average pre-incapacity weekly
16 earnings;
- 17 (ii) the statutory floor.
- 18 (4) An injured person stops being entitled to compensation under this
19 section at the earliest of the following times:
- 20 (a) when the person stops being totally incapacitated;
- 21 (b) when the person returns to work;
- 22 (c) for a person who, at the time of the injury being compensated,
23 was more than 2 years younger than pension age—when the
24 person reaches pension age;
- 25 (d) for a person who, at the time of the injury being compensated,
26 was 2 years younger than pension age, or older—2 years after
27 the person first became entitled to compensation under this
28 section;
- 29 (e) when the person dies.
-

1 (5) In this section:

2 *pre-incapacity floor*, for an injured person, means the statutory floor
3 that applied immediately before the person's incapacity date.

4 **36 Partially incapacitated people up to 26 weeks after**
5 **incapacity date**

6 (1) This section applies if—

7 (a) the injured person is partially incapacitated because of a
8 compensable injury; and

9 (b) immediately before the injury, the person was in paid
10 employment.

11 (2) For 26 weeks after the incapacity date, the injured person is entitled
12 to receive weekly compensation equal to the difference between—

13 (a) the person's average pre-incapacity weekly earnings; and

14 (b) the average weekly amount that the person is being paid for
15 working or could earn in reasonably available suitable
16 employment.

17 (3) In working out the average weekly amount the injured person could
18 earn, consideration may be given to the following:

19 (a) suitable employment that the person unreasonably rejects;

20 (b) suitable employment that the person obtains but unreasonably
21 discontinues.

22 **37 Partially incapacitated people after 26 weeks after**
23 **incapacity date**

24 (1) This section applies if—

25 (a) the injured person is partially incapacitated because of a
26 compensable injury; and

27 (b) immediately before the injury, the person was in paid
28 employment; and

-
- 1 (c) 26 weeks have passed since the incapacity date.
- 2 (2) The injured person is entitled to receive weekly compensation equal
3 to the difference between the weekly amount the person is being
4 paid for working and—
- 5 (a) if 100% of the person's average pre-incapacity weekly
6 earnings is less than the statutory floor—100% of the person's
7 average pre-incapacity weekly earnings; or
- 8 (b) if the relevant percentage of the person's average
9 pre-incapacity weekly earnings is less than the statutory
10 floor—the statutory floor; or
- 11 (c) if the relevant percentage of the person's average
12 pre-incapacity weekly earnings is more than the statutory
13 ceiling—the statutory ceiling; or
- 14 (d) in any other case—the relevant percentage of the person's
15 average pre-incapacity weekly earnings.
- 16 (3) For subsection (2), the *relevant percentage* is—
- 17 (a) if the injured person is not working or works 25% of the
18 person's average pre-incapacity weekly hours or less—65%; or
- 19 (b) if the person is working more than 25% of the person's average
20 pre-incapacity weekly hours but not more than 50%—75%; or
- 21 (c) if the person is working more than 50% of the person's average
22 pre-incapacity weekly hours but not more than 75%—85%; or
- 23 (d) if the person is working more than 75% of the person's average
24 pre-incapacity weekly hours but not more than 85%—95%; or
- 25 (e) if the person is working more than 85% of the person's average
26 pre-incapacity weekly hours—100%.
- 27 (4) In this section:
- 28 *statutory ceiling*, in relation to an amount, means 150% of AWE at
29 the time the amount is to be paid.
-

1 **38 Stopping of payments for partial incapacity**

2 A person stops being entitled to payments under section 36
3 (Partially incapacitated people up to 26 weeks after incapacity date)
4 or section 37 (Partially incapacitated people after 26 weeks after
5 incapacity date) at the earliest of the following times:

- 6 (a) when the person stops being partially incapacitated;
- 7 (b) for a person who, at the time of the injury being compensated,
8 was more than 2 years younger than pension age—when the
9 person reaches pension age;
- 10 (c) for a person who, at the time of the injury being compensated,
11 was 2 years younger than pension age, or older—2 years after
12 the person first became entitled to compensation under section
13 35 (Totally incapacitated people), 36 or 37, whichever is
14 earliest;
- 15 (d) when the person dies.

16 **39 Effect on payment period of loss of entitlement to weekly**
17 **compensation**

- 18 (1) This section applies if a person would be entitled to weekly
19 compensation under section 35 (Totally incapacitated people),
20 section 36 (Partially incapacitated people up to 26 weeks after
21 incapacity date) or section 37 (Partially incapacitated people after 26
22 weeks after incapacity date) but the payment of the compensation
23 has been stopped under section 31 (No compensation while
24 imprisoned) or section 96 (Compliance by injured people with
25 pt 11).
- 26 (2) The period when the person's entitlement to payment has stopped is
27 counted as part of the period for payment under sections 35, 36 and
28 37.

1 **40 Living outside Australia**

2 (1) A person who is otherwise entitled to receive weekly compensation
3 is not entitled to the compensation if the person stops living in
4 Australia.

5 (2) Subsection (1) does not apply to the person if a medical referee
6 certifies that—

7 (a) the incapacity resulting from the injury is likely to be
8 permanent; or

9 (b) the person's absence from Australia is likely to help the person
10 recuperate.

11 **41 Effect of living outside Australia if compensation still**
12 **payable**

13 (1) This section applies if the injured person lives outside Australia but
14 is, apart from this section, still entitled to weekly compensation.

15 *Note* A person living outside Australia is still entitled to compensation if
16 s 40 (2) applies to the person.

17 (2) The injured person is not entitled to weekly compensation, but is
18 entitled to receive quarterly the amount of the weekly compensation
19 payable during the previous quarter.

20 (3) However, the injured person is entitled to receive quarterly payment
21 of compensation only if the person proves the person's identity and
22 that the person continues to be incapacitated by the incapacity in
23 relation to which the weekly compensation is payable.

24 (4) In this section:

25 *quarter* means a period of 3 months beginning on 1 July, 1 October,
26 1 December or 1 April.

1 **42 Effect of payment of weekly compensation on other**
2 **benefits etc**

3 This part is not intended to affect an entitlement that, apart from this
4 Act, the injured person has to a benefit or payment except so far as a
5 law in force in the Territory otherwise applies.

6 **Examples of benefits not affected**

- 7 1 accrual of long service leave
8 2 accrual of annual leave.

9 *Note* An example is part of the Act, is not exhaustive and may extend, but
10 does not limit, the meaning of the provision in which it appears (see
11 *Legislation Act 2001*, s 126 and s 132).

12 **43 No assignment etc of weekly compensation**

13 Weekly compensation (including compensation payable under
14 section 41 (Effect of living outside Australia if compensation still
15 payable)) may not—

- 16 (a) be assigned, charged or attached; and
17 (b) pass to anyone else by operation of law; and
18 (c) have a claim set off against it.

Part 7 Compensation for permanent injuries

44 Meaning of *loss* for pt 7

In this part:

loss, in relation to a thing—

(a) means—

(i) the loss of the thing; or

(ii) the permanent loss of the use, or efficient use, of the thing; and

(b) includes the following:

(i) permanent musculoskeletal impairment, or another permanent impairment;

(ii) a loss, damage, impairment, disfigurement or disease mentioned in schedule 1 (Compensation for permanent injuries).

45 Meaning of *single loss amount*

In this part:

single loss amount means \$100 000 cpi indexed.

46 Meaning of *maximum loss amount*

In this part:

maximum loss amount means \$150 000 cpi indexed.

1 **47 Compensation for permanent injuries generally**

2 (1) A person who has suffered a loss mentioned in an item of schedule 1
3 as the result of a compensable injury is entitled to receive from the
4 business operator, as compensation for the loss, the percentage of
5 the single loss amount mentioned in the item.

6 (2) For this section, the loss is to be worked out when the last of the
7 following happens:

8 (a) the business operator became liable to pay compensation;

9 (b) it is unlikely that there will be an improvement or further
10 improvement in the use, or efficient use, of the injured part of
11 the body.

12 (3) If a payment of compensation under this part has been made in
13 relation to an injury, nothing prevents a further payment of
14 compensation under this part from being made in relation to the
15 same injury if there is an increase in the loss of the efficient use of
16 the injured part of the body.

17 **Example of loss of efficient use of injured part of body**

18 A loss, or further loss, of sight in an injured eye.

19 *Note* An example is part of the Act, is not exhaustive and may extend, but
20 does not limit, the meaning of the provision in which it appears (see
21 *Legislation Act 2001*, s 126 and s 132).

22 **48 Compensation for 2 or more losses**

23 A person who has suffered 2 or more losses mentioned in schedule 1
24 (Compensation for permanent injuries) because of a compensable
25 injury is not entitled to receive as compensation under this part more
26 than the maximum loss amount for the losses.

49 Compensation and left-handedness

If a person's left arm or hand is the person's dominant limb, in working out the loss for the person—

- (a) the loss of the person's left arm, left hand or fingers of left hand is to be compensated as if it is the loss of the person's right arm, right hand or fingers of right hand; and
- (b) the loss of the person's right arm, right hand or fingers of right hand is to be compensated as if it is the loss of the person's left arm, left hand or fingers of left hand.

50 Compensation for combination of items

If a loss (other than the impairment of the back, neck or pelvis) may be compensated by a combination of items in schedule 1 (Compensation for permanent injuries) or by a proportionate loss of a single item, the loss is to be compensated by a proportionate loss of the single item.

Examples

- 1 Loss of 2 or more fingers is to be compensated as a proportionate loss of the hand.
- 2 Loss of a hand includes the loss of the thumb and other fingers of the hand and is to be compensated as a loss, or proportionate loss, of the hand.
- 3 Loss of an arm at or above the elbow includes the loss of the arm below the elbow and loss of the hand and is to be compensated as a loss, or a proportionate loss, of the arm at or above the elbow.
- 4 Loss of a leg at or above the knee includes the loss of the leg below the knee and loss of the foot and is to be compensated as a loss, or a proportionate loss, of the leg at or above the knee.
- 5 Loss of a leg below the knee includes the loss of the foot and is to be compensated as a loss, or a proportionate loss, of the leg below the knee.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

1 **51 Compensation for only arm, leg, hand or foot**

2 Loss of an only arm, leg, hand or foot is treated under schedule 1 as
3 the loss of both arms, legs, hands or feet.

4 **52 Compensation for loss of sexual organs**

5 The following percentages of the single loss amount are payable for
6 the loss of sexual organs (subject to the maximum percentage of
7 47% and without limiting compensation for the loss of another
8 sexual organ):

- 9 (a) the percentage payable for loss of the penis is 47%;
- 10 (b) the percentage payable for loss of 1 testicle is 10%;
- 11 (c) the percentage payable for loss of 2 testicles or an only testicle
12 is 47%.

13 **53 Loss of bowel function**

14 To work out whether and to what extent a injured person has
15 suffered permanent loss of bowel function—

- 16 (a) the bowel is taken to include the anal sphincter; and
- 17 (b) permanent ileostomy and permanent colostomy are each taken
18 to constitute permanent loss of bowel function for which the
19 maximum percentage is payable.

20 **54 Proportionate loss of use**

- 21 (1) If a loss suffered by a person consists of the loss of a proportion, but
22 not all, of a thing mentioned in schedule 1 (Compensation for
23 permanent injuries), a percentage of the compensation payable for
24 the total loss of the thing equal to the percentage lost by the person
25 is payable as compensation under section 47 (Compensation for
26 permanent injuries generally).

- 1 (2) In working out the extent of the loss of the thing, the extent to which
2 the loss, or the effect of the loss, may be reduced or limited by an
3 external removable aid or appliance is not to be taken into account.
- 4 (3) The amount of compensation payable for a particular case must,
5 unless decided by agreement, be worked out by conciliation or
6 arbitration under this Act.

7 **55 Special provisions for HIV/AIDS**

- 8 (1) Compensation is not payable under section 47 (Compensation for
9 permanent injuries generally) for a loss that is related to HIV
10 infection or AIDS if the HIV or AIDS was contracted during
11 voluntary sexual activity or illicit drug use.
- 12 (2) Section 54 does not apply to a loss that is HIV infection or AIDS.
- 13 (3) In this section:
- 14 **AIDS** means Acquired Immune Deficiency Syndrome.
- 15 **HIV infection** means an infection by the Human Immunodeficiency
16 Virus.

17 **56 Deduction for previous injury or pre-existing condition**

- 18 (1) In working out the compensation payable under this part for a loss
19 (the *initial loss*), an amount must be deducted from the
20 compensation (the *deductible proportion*) for any proportion of the
21 loss attributable to—
- 22 (a) a previous injury (whether or not it is an injury for which
23 compensation has been paid, or is payable, under this part); or
- 24 (b) a pre-existing condition or abnormality.
- 25 (2) In subsection (1), it does not matter whether the initial loss is a total
26 or partial loss.

- 1 (3) If there is a deductible proportion for a loss but the extent of the
2 deductible proportion (or a part of it) will be difficult or costly to
3 work out, it is to be assumed that the deductible proportion for the
4 loss (or the relevant part of the loss) is 10% of the loss, unless this
5 assumption is contrary to the available evidence.

6 **Example**

7 If this subsection requires it to be assumed that the deductible proportion in
8 relation to a particular loss is 10% and the loss is 30% of the loss of the use of the
9 right arm, the deductible proportion for the loss is 3% (that is, 10% of 30%).

10 *Note* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 *Legislation Act 2001*, s 126 and s 132).

13 **57 Further loss and deductible proportions**

- 14 (1) This section applies in working out the compensation payable for a
15 further loss (the *further loss*) resulting from an initial loss.
- 16 (2) An amount proportionate to the deductible proportion of the initial
17 loss must be deducted from the compensation payable for the further
18 loss.
- 19 (3) A deduction under subsection (2) in relation to a further loss is in
20 addition to, not in substitution for, any deductible proportion for the
21 further loss.

22 **58 Reimbursement for costs of medical certificate and**
23 **examination**

- 24 (1) Obtaining a medical certificate, and any examination required for
25 the certificate, is taken to be medical or related treatment for this
26 Act if the injured person gives the business operator a copy of the
27 certificate.

1 (2) In this section:

2 *medical certificate* means a report or certificate, from a doctor, that
3 complies with the requirements for medical assessments prescribed
4 under the regulations and that certifies—

5 (a) that an injured person has suffered a loss mentioned in
6 schedule 1 (Compensation for permanent injuries); or

7 (b) the extent of the loss to allow the amount of compensation
8 payable for the loss to be worked out.

9 **59 Limited entitlement if death happens within 3 months**

10 (1) This section applies if—

11 (a) a person has received a compensable injury; and

12 (b) the person dies within 3 months after receiving the
13 compensable injury because of the compensable injury or
14 another injury received at the same time.

15 (2) The person is not entitled to receive compensation for the
16 compensable injury under the following items of schedule 1
17 (Compensation for permanent injuries):

18 (a) item 2 (loss of sense of taste or smell);

19 (b) item 3 (loss of senses of taste and smell);

20 (c) item 41 (loss of sexual organs);

21 (d) item 42 (loss of both breasts);

22 (e) item 43 (loss of 1 breast);

23 (f) item 44 (permanent and total loss of capacity to engage in
24 sexual intercourse);

25 (g) item 49 (severe facial disfigurement);

26 (h) item 50 (severe bodily disfigurement).

1 **Part 8** **Compensation for medical**
2 **treatment, damage and other**
3 **costs**

4 **60 Application of pt 8**

5 This part applies if—

- 6 (a) compensation under this Act is payable by a business operator
7 to, or in relation to, an injured person in relation to the injury;
8 or
9 (b) compensation would be payable by a business operator to, or in
10 relation to, an injured person in relation to an injury except
11 that—
12 (i) the injured person is not incapacitated for work; or
13 (ii) the injured person is imprisoned (see section 31); or
14 (iii) weekly compensation has been suspended under
15 section 96 (Compliance by injured people with pt 11); or
16 (iv) the injured person has contravened this Act.

17 *Note* A reference to an Act includes a reference to the statutory instruments
18 made or in force under the Act, including regulations (see *Legislation*
19 *Act 2001*, s 104).

20 **61 Business operator's liability for medical treatment and**
21 **damage**

22 (1) The business operator is liable to pay—

- 23 (a) for the cost of medical treatment reasonably obtained in
24 relation to the injury—an amount of compensation appropriate
25 for the provision of the medical treatment, having regard to the
26 charges customarily made for similar medical treatment in the
27 place where the treatment is obtained; and

-
- 1 (b) in relation to any damage to, or loss of, the injured person's
2 clothing sustained in association with the
3 injury—compensation of a reasonable amount for the repair or
4 replacement of the damaged or lost clothing.
- 5 (2) However, the total amount payable under subsection (1) for each of
6 the following must not be more than the maximum amount:
- 7 (a) for the cost of medical treatment consisting of the repair or
8 replacement of an injured person's contact lenses, crutches,
9 prosthesis, spectacles or other artificial aid;
- 10 (b) for damage to or loss of an injured person's clothing.
- 11 (3) In subsection (2):
- 12 **maximum amount**, in relation to a treatment, damage or loss,
13 means—
- 14 (a) if an amount has been agreed between the injured person and
15 the business operator—the agreed amount; or
- 16 (b) in any other case—\$500 cpi indexed.
- 17 (4) For this section, the cost of medical treatment is taken to include—
- 18 (a) the amount of wages lost by the injured person because of the
19 person's attendance at a place (the **treatment place**) to undergo
20 the treatment; and
- 21 (b) the cost of taking the injured person (whether the injured
22 person or someone else does the taking) to and from the
23 treatment place worked out under section 65 (Transport costs
24 other than private car) or section 66 (Working out transport
25 costs for private cars); and
- 26 (c) the cost of any accommodation (including the cost of meals)
27 required by the injured person because of the person's
28 attendance at the treatment place worked out under section 67
29 (Costs of accommodation and meals).
-

1 **62 Claim for compensation for pt 8**

2 (1) An injured person may make a claim for compensation under this
3 part for the cost of medical treatment or in relation to damage to, or
4 loss of, the injured person's clothing only if the injured person has
5 given the business operator written notice stating—

6 (a) the amount of compensation sought; and

7 (b) reasonable details of the expenses for which compensation is
8 sought.

9 (2) However, a failure to give notice, or a defect or inaccuracy in the
10 notice, does not affect a claim for compensation under this part if it
11 is found in the proceeding on the claim that—

12 (a) if a notice or amended notice were then given and the hearing
13 postponed, the business operator's defence is not, or would not
14 be, prejudiced by the failure, defect or inaccuracy; or

15 (b) the failure, defect or inaccuracy was caused by mistake or
16 other reasonable cause.

17 **63 Second assessments**

18 (1) This section applies if the injured person receives medical treatment
19 and claims the cost of it from the business operator under this part.

20 (2) The business operator may, in consultation with the doctor or other
21 person providing the treatment, and before making a payment under
22 this part, require the injured person to be assessed by a doctor, or
23 other person, chosen by the business operator.

24 **64 Payments for treatment received from hospital**

25 (1) This section applies if the business operator is liable under this part
26 to pay an amount in relation to medical treatment received by the
27 injured person from a hospital.

-
- 1 (2) The business operator must pay the amount, less any amount
2 previously paid by the injured person in relation to the treatment, on
3 demand—
- 4 (a) for a private hospital—to the proprietor of the hospital; or
- 5 (b) for any other hospital—to the person authorised in writing by
6 the governing entity in charge of the hospital to receive
7 payments payable to the hospital.

8 **65 Transport costs other than private car**

- 9 (1) This section sets out how the costs of taking an injured person to
10 and from a place (other than by private motor vehicle) to undergo
11 medical treatment must be worked out.
- 12 (2) If the injured person cannot be taken in a motor vehicle (other than
13 an ambulance) because of the person's injury, the transport cost is
14 the actual cost of the transport by ambulance.
- 15 (3) The transport cost is the actual cost of the public transport if the
16 injured person is taken by public transport because, although the
17 person can be taken in a private motor vehicle—
- 18 (a) the person is prohibited by law from taking himself or herself
19 in a private motor vehicle and no-one else is available to take
20 the injured person in a private motor vehicle; or
- 21 (b) no private motor vehicle is available.
- 22 (4) The transport cost is the reasonable cost of transport if a private
23 motor vehicle or public transport is not reasonably available, or
24 reasonably appropriate, to transport the injured injured person in the
25 circumstances.
- 26 (5) In this section:
- 27 ***public transport*** means a public bus or taxi within the meaning of
28 the *Road Transport (Public Passenger Services) Act 2001*.

1 **66 Working out transport costs for private cars**

- 2 (1) The costs of taking an injured person by private motor vehicle (the
3 *car*) to and from a place to undergo medical treatment must be
4 worked out in accordance with this section.
- 5 (2) The transport cost is the cost worked out by multiplying the number
6 of kilometres travelled to and from the place by the per kilometre
7 cost for the car.
- 8 (3) The per kilometre cost for the car is the amount mentioned in the
9 *Income Tax Assessment Regulations 1997* (Cwlth), schedule 1,
10 part 2 in relation to the size of the car for the financial year in which
11 the cost was incurred.

12 **67 Costs of accommodation and meals**

- 13 (1) The cost of accommodation for the person is the relevant amount set
14 out in a public ruling by the Commonwealth Commissioner of
15 Taxation in relation to reasonable allowance amounts for the year in
16 which the costs were incurred.

17 *Note* For the financial year 2000-2001, the ruling in relation to reasonable
18 allowance amounts is TR2000/13. It is available on the website of the
19 Australian Taxation Office (www.ato.gov.au).

- 20 (2) The regulations may prescribe the relevant amount.
- 21 (3) The injured person is not entitled to payment for a meal unless the
22 meal is eaten while the person—
- 23 (a) is travelling to or from medical treatment (the *treatment*) for
24 which compensation is payable under this part; or
- 25 (b) is at a place to receive the treatment; or
- 26 (c) is staying at accommodation for which compensation is
27 payable under this part.

1 (4) In this section:

2 *accommodation*, for an injured person, includes meals for the
3 person, other than a meal to which the person is not entitled to
4 payment because of subsection (3).

5 *public ruling*—see the *Taxation Administration Act 1953* (Cwlth),
6 section 14ZAAA (Interpretation).

1 **Part 9** **Compensation for death**

2 **68 Death benefits**

- 3 (1) This section applies to the death of a person for which compensation
4 is payable under this Act.
- 5 (2) The dependants of the person are entitled to the following:
- 6 (a) a single lump sum payment of \$150 000 cpi indexed to be
7 divided between the dependants;
- 8 (b) for each dependant who is a child—weekly compensation of
9 \$50 cpi indexed;
- 10 (c) the funeral expenses of the person to a maximum of \$4 000 cpi
11 indexed.
- 12 (3) In working out for this Act whether or not a child is, or was,
13 dependent on the earnings of the injured person, any family tax
14 benefit within the meaning of the *A New Tax System (Family*
15 *Assistance) Act 1999* (Cwlth), section 3 (Definitions) in relation to
16 the child must be disregarded.
- 17 (4) To remove any doubt, the payment under subsection (2) (a) need not
18 be divided equally between the dependants, but may be divided
19 between them as the Magistrates Court considers appropriate.
- 20 (5) Compensation under subsection (2) (b) is payable only while the
21 person receiving it is a child.
- 22 (6) If the person did not have dependants, the personal representative of
23 the person is entitled to a maximum of \$4 000 cpi indexed for the
24 funeral expenses of the person.

- 1 **69 Payment into court of lump sum death benefits**
- 2 (1) A payment mentioned in section 68 (2) (a) (the ***lump sum***) must be
- 3 paid into the Magistrates Court, unless the court otherwise orders.
- 4 (2) The Magistrates Court must, until the lump sum is paid to the person
- 5 entitled to it—
- 6 (a) invest, apply or otherwise deal with the lump sum payment in
- 7 the way the court considers appropriate for the benefit of the
- 8 person entitled to it under this Act; or
- 9 (b) deal with it under the *Public Trustee Act 1985*, section 25
- 10 (Payment of money etc to public trustee on behalf of a person
- 11 under disability).
- 12 (3) The receipt of the registrar of the Magistrates Court is a sufficient
- 13 discharge for the amount paid in.

- 1 **Part 10** **Registration of agreements for**
2 **compensation**
- 3 **70 Registration of agreements for compensation**
- 4 (1) If the injured person agrees to receive an amount of compensation
5 under section 47 (Compensation for permanent injuries generally)
6 for a loss or under section 118 (How injured person may commute
7 rights) for the commutation of a right, a party to the agreement may
8 apply to the Magistrates Court for registration of the agreement.
- 9 (2) The Magistrates Court may refuse to register the agreement if the
10 court considers that the agreement is inaccurate or that the agreed
11 amount of compensation is manifestly inadequate.
- 12 (3) The Magistrates Court must refuse to register the agreement unless
13 satisfied that the injured person received independent legal advice
14 about the agreement before entering into it.
- 15 (4) An agreement may deal with the payment of costs.
- 16 **71 Effect of registration of agreements**
- 17 (1) An injured person with a registered agreement in relation to a loss or
18 the commutation of a right is not entitled to receive any additional
19 compensation for the loss or commutation of the right under an
20 award of the Magistrates Court.
- 21 (2) However, the Magistrates Court may award additional
22 compensation if satisfied that—
- 23 (a) the agreement was obtained by fraud or undue influence; or
24 (b) the agreed amount of compensation was manifestly inadequate.

- 1 **72 Cancellation or amendment of registered agreements**
- 2 (1) On application by a party to a registered agreement, the Magistrates
- 3 Court may amend the registered agreement or cancel the registration
- 4 of the agreement.
- 5 (2) The Magistrates Court may act under subsection (1) only if—
- 6 (a) a party becomes aware of evidence that was not available to
- 7 the party when the agreement was made; and
- 8 (b) the court considers that, if the party had been aware of the
- 9 evidence, the agreement would not have been made, or would
- 10 not have been made as registered.

1 **Part 11 Injury management process**

2 **Division 11.1 Object and definitions for part 11**

3 **73 Object of pt 11**

4 The object of this part is to establish a system the aim of which is to
5 achieve the best results for the timely, safe and durable return to
6 health of injured people following injuries to which this Act applies.

7 **74 Definitions for pt 11**

8 In this part:

9 *business operator's injury notice*—see section 80 (2).

10 *injured person's injury notice*—see section 80 (1).

11 *injury* means an injury in relation to which compensation is or may
12 be payable under this Act.

13 *injury management* means the process that consists of activities and
14 procedures that are carried out or established to achieve a timely,
15 safe and durable return to health for injured people.

16 *injury management program* means a coordinated and managed
17 program that integrates all aspects of injury management (including
18 treatment, rehabilitation, retraining, claims management and
19 employment management practices) to achieve the best results for a
20 timely, safe and durable return to health of injured people.

21 *insured person*—see section 76 (2).

22 *nominated treating doctor*, for an injured person, means the doctor
23 or medical practice nominated under section 89 (Nomination of
24 doctor for personal injury plan).

personal injury plan, for an injured person, means a plan for coordinating and managing the aspects of injury management, that relate to the treatment, rehabilitation and retraining of the person, to achieve a timely, safe and durable return to health for the person.

Division 11.2 General obligations

75 Insurer to establish etc injury management program

- (1) An insurer must establish and maintain an injury management program.
- (2) An insurer must review the effectiveness of its injury management program at least once every 2 years and revise the program in accordance with the results of the review.
- (3) An insurer must give a copy of its injury management program, and any revised injury management program, to the Minister.

76 Insurer to give effect to injury management program

- (1) An insurer must give effect to its injury management program, in particular by complying with the obligations imposed on the insurer under the program.
- (2) An insurer must take appropriate steps to ensure that each person (an *insured person*) who is insured by the insurer in relation to a liability covered by this Act is aware of the person's obligations under this part and is aware of the requirements of the insurer's injury management program.
- (3) Subsection (2) does not apply to a self-insurer.

1 **77 Insurer's obligation of prompt payment**

2 (1) If an insurer is required under this Act to pay an amount for a
3 service, the insurer must pay the amount to the person who provided
4 the service (the *service provider*) within 30 days after the service is
5 provided.

6 Maximum penalty: 10 penalty units.

7 (2) Subsection (1) does not apply if the insurer does not pay for the
8 service because—

9 (a) the insurer believes on reasonable grounds that the service has
10 not been provided, or has not been properly provided, and the
11 insurer has told the service provider, in writing, why the
12 insurer has not paid for the service; or

13 (b) the insurer has another reasonable ground for not paying for
14 the service.

15 **78 Insured person's obligations for injury management**
16 **programs**

17 An insured person must comply with the reasonable obligations
18 imposed on the insured person by the person's insurer under the
19 insurer's injury management program.

20 Maximum penalty: 10 penalty units.

21 **79 Register of injuries**

22 (1) This section applies to commercial premises.

23 (2) A register of injuries (the *register*) is to be kept at the premises in a
24 place that is readily accessible to people on the premises.

25 (3) The person in charge of the premises and, if different from the
26 person in charge, the owner of the business operating at the
27 premises must ensure the register is kept in accordance with
28 subsection (2).

29 Maximum penalty: 50 penalty units.

- 1 (4) A person must not, without lawful authority or excuse, change,
2 damage, deface, remove or otherwise interfere with the register.
3 Maximum penalty: 20 penalty units.
- 4 (5) A person injured on the premises, or a person acting on the injured
5 person's behalf, may enter in the register details of an injury
6 received by the injured person.
- 7 (6) If details of the injury are entered in the register as soon as possible
8 after the injury happens, the entry is taken to be notice of the injury
9 given to the business operator by the injured person for this Act.

10 Division 11.3 Obligations on injury

11 80 Early notification of injury

- 12 (1) The injured person must give the business operator notice (an
13 *injured person's injury notice*) that the injured person has received
14 an injury on the premises as soon as possible after being injured.
- 15 *Note* An injured person may give notice of an injury by making an entry in a
16 register of injuries (see s 79).
- 17 (2) The business operator must give the insurer notice of the injury (a
18 *business operator's injury notice*) under section 82 within 48 hours
19 after becoming aware that the injured person has received an injury.
- 20 (3) Subsection (2) does not apply if the insurer is a self-insurer.

21 81 Injured person's injury notice

22 An injured person's injury notice given to the business operator
23 must contain—

- 24 (a) the name and address of the injured person; and
25 (b) the cause of the injury (in ordinary language); and
26 (c) the date and time the injury happened.

1 **82 Business operator's injury notice**

2 (1) A business operator's injury notice must state—

3 (a) the name and address of the injured person; and

4 (b) the cause of the injury (in ordinary language); and

5 (c) the date and time the injury happened; and

6 (d) the name and address of the business operator; and

7 (e) the name and address of the nominated treating doctor or, if
8 there is no treating doctor, a doctor who has treated the person
9 for the injury.

10 (2) The business operator may give the notice orally, in writing or in
11 electronic form.

12 (3) However, if the business operator gives the notice orally, the
13 business operator must give the notice in writing or in electronic
14 form within 3 days after giving the notice orally.

15 (4) The notice of injury is taken to have been given to a business
16 operator—

17 (a) if it is given to a person designated for the purpose by the
18 business operator; or

19 (b) if it is given to a person apparently in charge of the premises.

20 **83 What if business operator does not give business**
21 **operator's injury notice within time?**

22 (1) This section applies if a business operator (other than a self-insurer)
23 is given an injured person injury notice, but does not give the insurer
24 the business operator's injury notice within the time (the
25 *notification time*) mentioned in section 80 (2) (Early notification of
26 injury).

- 1 (2) The business operator is liable to pay the injured person weekly
2 compensation from the end of the notification time until the
3 business operator gives the insurer the business operator's injury
4 notice.
- 5 (3) The business operator must not be indemnified by the insurer for a
6 payment mentioned in subsection (2).

7 **84 Obligation of insurer on being notified of injury**

8 Within 3 business days after receiving the business operator's injury
9 notice, the insurer must take action under the insurer's injury
10 management program and must (in accordance with the program)
11 make contact with the injured person, the business operator (except
12 if the insurer is a self-insurer) and (if appropriate and practicable)
13 the injured person's nominated treating doctor.

14 Maximum penalty: 10 penalty units.

15 **Division 11.4 Obligations in relation to personal**
16 **injury plans**

17 **85 Personal injury plan for person with significant injury**

- 18 (1) If it appears to an insurer who is, or may be, liable to pay
19 compensation to an injured person on behalf of a business operator
20 that the injury is a significant injury, the insurer must establish a
21 personal injury plan for the injured person.
- 22 (2) The personal injury plan must be established—
- 23 (a) in agreement with the injured person, to the maximum extent
24 that their cooperation and participation allow; and
- 25 (b) with the assistance of an approved rehabilitation provider.
- 26 (3) The insurer must give effect to the personal injury plan established
27 for the injured person and, for that purpose, must comply with the
28 obligations imposed on the insurer under the plan.
- 29 (4) In this section:

1 *significant injury* means an injury that is likely to result in the
2 injured person being incapacitated for work for a continuous period
3 of longer than 7 days, whether or not any of those days are business
4 days and whether or not the incapacity is total or partial or a
5 combination of both.

6 **86 Provision of information about personal injury plan**

- 7 (1) The insurer must give the injured person information about the
8 personal injury plan.
- 9 (2) The information must include a statement to the effect that the
10 injured person's entitlement to weekly compensation may stop if the
11 person unreasonably fails to comply with the requirements of this
12 Act after being asked to do so by the insurer.

13 **87 Vocational rehabilitation**

14 The insurer must ensure, as far as possible, that vocational
15 rehabilitation provided or arranged for the injured person under the
16 personal injury plan is of a kind that may reasonably be thought
17 likely to lead to a real prospect of employment or a real increase in
18 earnings for the injured person.

19 **88 Injured person's personal injury plan obligations**

- 20 (1) The injured person must take part and cooperate in the
21 establishment of a personal injury plan for the person.

22 *Note* If the injured person does not take part and cooperate in the
23 establishment of the injured person's personal injury plan, the person's
24 weekly compensation may be stopped while time for payment of
25 weekly compensation continues to run against the person (see s 96).

- 26 (2) The injured person must comply with reasonable obligations
27 imposed on the person under the person's personal injury plan,
28 including any obligation to receive medical or surgical treatment or
29 take part in rehabilitation or retraining.

89 Nomination of doctor for personal injury plan

- (1) The injured person must nominate a doctor, or medical practice, as the person's treating doctor for the person's personal injury plan.
- (2) The injured person may only nominate a doctor, or medical practice, that is prepared to take part in the development of, and in the arrangements under, the person's personal injury plan.
- (3) The nomination of a medical practice as treating doctor for the injured person's personal injury plan is the nomination of the members of the practice who treat the injured person from time to time.
- (4) The injured person must authorise the person's nominated treating doctor to provide relevant information to the insurer for the injured person's personal injury plan.
- (5) The injured person's personal injury plan must provide a way for the person to change the person's nominated treating doctor.

90 Subsequent medical certificates under personal injury plan

A medical certificate required under a personal injury plan in relation to a claim for ongoing compensation under this Act must be from a doctor.

91 Payment of cost of treatment of injured person

- (1) The injured person's personal injury plan may provide for the insurer to pay the following costs:
- (a) the cost of any treatment for the injury provided to the injured person by the nominated treating doctor if the nominated treating doctor is prepared to take part in the arrangements under the plan;

- 1 (b) the cost of other treatment described in the plan that is
2 provided to the injured person for the injury.

3 **Examples of other treatment**

4 Treatment may be identified by reference to factors like the kind of treatment, the
5 identity of the health care professional who provides the treatment, and the
6 circumstances in which the treatment is provided.

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 *Legislation Act 2001*, s 126 and s 132).

- 10 (2) For a payment under subsection (1), it does not matter that the
11 injured person has not made a claim for compensation, that the
12 insurer has not accepted liability for the injury or if the insurer
13 disputes liability for the injury.

- 14 (3) If the insurer makes the payments in relation to the injury and
15 another insurer (the *other insurer*) or another business operator (the
16 *other business operator*) accepts liability to pay compensation to
17 the injured person in relation to the injury, the insurer is entitled to
18 recover the costs (to the extent that compensation is payable under
19 this Act in relation to the costs) as a debt from the other insurer or
20 other business operator.

- 21 (4) An amount recoverable under subsection (3) is taken to be payable
22 by the other insurer or other business operator as compensation to
23 the injured person.

24 **Division 11.5 Other obligations**

25 **92 If injured person was employed**

- 26 (1) This section applies if, before the compensable injury, the injured
27 person was employed.
28 (2) The injured person must make all reasonable efforts to return to
29 work as soon as possible, considering the nature of the injury.

93 Payment of cost of treatment of injured person

(1) The person's personal injury plan may provide for the insurer to pay the following costs:

(a) the cost of any treatment for the compensable injury provided to the injured person by the nominated treating doctor if the nominated treating doctor is prepared to take part in the arrangements under the plan;

(b) the cost of other treatment described in the plan that is provided to the injured person for the compensable injury.

Examples of other treatment

Treatment may be identified by reference to factors like the kind of treatment, the identity of the health care professional who provides the treatment, and the circumstances in which the treatment is provided.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

(2) For a payment under subsection (1), it does not matter that the injured person has not made a claim for compensation, that the insurer has not accepted liability for the injury or if the insurer disputes liability for the injury.

(3) If the insurer makes the payments in relation to the injury and another insurer (the ***other insurer***) or another business operator (the ***other business operator***) accepts liability to pay compensation to the injured person in relation to the injury, the insurer is entitled to recover the costs (to the extent that compensation is payable under this Act in relation to the costs) as a debt from the other insurer or other business operator.

(4) An amount recoverable under subsection (3) is taken to be payable by the other insurer or other business operator as compensation to the injured person.

1 **Division 11.6 Compliance with part 11**

2 **94 Obligation of Minister to monitor compliance**

3 The Minister must monitor compliance by insurers with the
4 requirements of this part.

5 **95 Compliance by insurers with pt 11**

6 It is a condition of an insurer's approval that the insurer must
7 comply with the requirements of this part.

8 **96 Compliance by injured people with pt 11**

9 (1) An injured person is not entitled to weekly compensation for a
10 period when the person unreasonably contravenes a requirement
11 under this part (including under the person's personal injury plan)
12 after being asked in writing by the insurer to comply with the
13 requirement.

14 (2) An injured person's entitlement to weekly compensation does not
15 stop under this section until 2 weeks after the day, or latest day, the
16 insurer gives written notice to the injured person and to the Minister
17 that the compensation will stop.

18 (3) The notice must be accompanied by a statement of the reasons for
19 the entitlement stopping and the action that the insurer considers the
20 injured person must take to be entitled to the continuation, or
21 resumption, of weekly compensation.

22 (4) The resumption of weekly compensation does not entitle the injured
23 person to weekly compensation for the period when the person had
24 no entitlement to weekly compensation.

25 **97 Unreasonableness in stopping payment**

26 (1) This section applies if an insurer gives the injured person and
27 Minister notice under section 96 and stops the injured person's
28 weekly compensation.

- 1 (2) If the Minister considers that stopping the weekly compensation
2 may have been unreasonable, the Minister may do either or both of
3 the following:
- 4 (a) ask the insurer, in writing, for further information about the
5 stoppage;
- 6 (b) direct the insurer, in writing, not to stop paying the weekly
7 compensation, or to continue to pay the weekly compensation,
8 for a stated time that is not longer than 1 month.
- 9 (3) If the Minister considers that stopping payment of the weekly
10 compensation is unreasonable, the Minister may—
- 11 (a) tell the insurer so in writing; and
- 12 (b) direct the insurer, in writing, not to stop paying the weekly
13 compensation, or to continue to pay the weekly compensation
14 until the Minister otherwise directs or the claim is settled or
15 decided.
- 16 (4) The insurer must not, without reasonable excuse, contravene a
17 direction under this section.
- 18 Maximum penalty: 10 penalty units.

19 **98 Liability not affected by injury management program etc**

20 Nothing done under or for an injury management program or
21 personal injury plan by an insurer or business operator is an
22 admission of liability by the insurer or business operator under this
23 Act or independently of this Act.

1 **Part 12 Claims**

2 **Division 12.1 Making claims**

3 **99 Making claim for compensation**

- 4 (1) An injured person may claim compensation under this Act.
- 5 (2) A claim for weekly compensation must be accompanied by a
6 medical certificate from a doctor.
- 7 (3) Failure to make a claim under this Act does not prevent the recovery
8 of compensation if it is found that the failure was caused by
9 ignorance, mistake or other reasonable cause.

10 **100 Claim for property loss or damage**

- 11 (1) This section applies to the loss of, or damage to, property because of
12 a compensable injury.
- 13 (2) The details required to be given in the claim in relation to the loss or
14 damage are details that adequately identify the property and how it
15 was lost or damaged.

16 **101 No requirement to give information or material more than
17 once**

18 To the extent that information or material has been given in the
19 course of the making of a claim for compensation for an injury, it is
20 not necessary to give the information or material when making any
21 further claim for compensation in relation to the same injury.

22 **102 Time for taking proceedings generally**

23 A proceeding for the recovery of compensation for an injury may
24 continue only if—

- 25 (a) an injured person's injury notice in relation to the injury was
26 given as soon as practicable after the injury happened; and

-
- (b) the claim for compensation was made—
- (i) within 3 years after the injury happened; or
 - (ii) if the injured person was not aware of the injury when it happened—within 3 years after the person became aware of the injury; or
 - (iii) if the injured person dies—within 3 years after the claimant became aware of the death.

103 Time for making claim under pt 7

- (1) A claim for compensation payable under part 7 (Compensation for permanent injuries) in relation to an injury may not be made earlier than 2 years after the injury.
- (2) However, the claim may be made earlier than 2 years after the injury if—
 - (a) the Magistrates Court allows the claim to be made; or
 - (b) the injury has stabilised.
- (3) The Magistrates Court may allow the claim to be made earlier than 2 years after the injury only if satisfied that an early application is justified by the severity of the injury or the prospect of the injured person's imminent death.

104 When is a claim made?

- (1) A claim is made on the day the claim is given to the business operator or insurer.
- (2) If the claim is given to the business operator and insurer on different days, the claim is made on the day the claim is given to the first of them.

Note Section 105 (No notice or defective or inaccurate notice) contains an exception to this regulation.

1 **105 No notice or defective or inaccurate notice**

- 2 (1) This section applies to a claim in relation to which—
- 3 (a) an injured person's injury notice has not been given; or
- 4 (b) the injured person's injury notice given was defective or
- 5 inaccurate.
- 6 (2) A proceeding may be maintained in relation to the claim if the
- 7 Magistrates Court or arbitrator finds, in the proceeding for the
- 8 claim, that—
- 9 (a) the injured person's defence is not, or would not be, prejudiced
- 10 by the lack of notice, or defect or inaccuracy in the notice, if a
- 11 notice or amended notice were given and the hearing
- 12 postponed; or
- 13 (b) the lack of notice, or defect or inaccuracy in the notice, was
- 14 caused by ignorance, mistake or another reasonable cause.

15 **106 Admissibility of statements by injured people**

16 A written statement in relation to an injured person's injury given by

17 the injured person to the business operator or the insurer is

18 admissible in evidence on behalf of the business operator in a

19 proceeding under this Act only if the business operator gives the

20 injured person a copy of the statement at least 2 weeks before the

21 proceeding is begun.

22 **107 Action by business operator in relation to claims**

- 23 (1) If a business operator receives a claim for compensation or another
- 24 document in relation to a claim, the business operator must, within 1
- 25 week after the day the person receives the claim or document, give it
- 26 to the insurer that the person believes is liable to indemnify the
- 27 person for the claim (the *liable insurer*).

28 Maximum penalty: 50 penalty units.

- 1 (2) If the business operator receives a written request from the liable
2 insurer for further stated information in relation to the claim or
3 document, the person must, within 1 week after the day the business
4 operator receives the request, either—
- 5 (a) give the insurer the requested information; or
- 6 (b) if the information is not in the business operator's possession
7 and is not reasonably obtainable by the person—tell the insurer
8 that in writing.
- 9 Maximum penalty: 50 penalty units.
- 10 (3) If a business operator has received an amount of compensation
11 under this Act from an insurer, the business operator must
12 immediately pay the amount to the person entitled to the
13 compensation.
- 14 Maximum penalty: 50 penalty units.
- 15 (4) This section does not apply to a business operator who is a
16 self-insurer.
- 17 (5) A person does not commit an offence by contravening this section if
18 there was a reasonable excuse for the contravention.

19 **Division 12.2** **Time for accepting or rejecting**
20 **claims**

21 **108 Meaning of *given* to insurer for div 12.2**

22 For this division, a claim is *given* to the insurer if the claim is given
23 to the insurer or the insurer is given notice of the claim by the
24 business operator or injured person.

1 **109 Claim accepted if not rejected within 28 days**

2 If the insurer does not reject an injured person's claim for
3 compensation under this Act within 28 days after the claim is given
4 to the insurer—

- 5 (a) the insurer is taken to have accepted the claim; and
6 (b) any payment made by the insurer in relation to the claim is not
7 recoverable.

8 **110 Rejecting claims generally**

9 (1) An insurer rejects a claim for compensation under this Act by
10 written notice given to the injured person and, unless the insurer is a
11 self-insurer, the business operator.

12 (2) The claim is taken to be rejected when the notice is received by the
13 injured person and, unless the insurer is a self-insurer, the business
14 operator.

15 (3) If the injured person and the business operator do not receive the
16 notice on the same day, the notice is taken to have been given on the
17 day the notice is received by the last of them.

18 (4) The notice must include the reason the insurer is rejecting the claim.

19 (5) If the insurer rejects the claim 28 days or later after the claim is
20 given to the insurer, the notice must include a statutory declaration
21 explaining why the insurer is rejecting the claim.

22 *Note* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of
23 statutory declarations under ACT laws (see that Act, s 5).

24 (6) For this section, a notice is taken not to contain the reason the
25 insurer is rejecting the claim if it simply says the claim is being
26 rejected for medical reasons without including the medical reasons.

1 **111 Rejecting claim within 28 days**

2 (1) If the insurer rejects the injured person's claim within 28 days after
3 the claim is given to the insurer, the insurer may—

4 (a) stop weekly compensation to the injured person 2 weeks after
5 the insurer rejects the claim; and

6 (b) stop payment of compensation mentioned under part 8
7 (Compensation for medical treatment, damage and other costs)
8 for costs incurred 2 weeks or later after the insurer rejects the
9 claim.

10 *Note* For how a claim is rejected, see s 110.

11 (2) However, the insurer is not entitled to reject the injured person's
12 claim within 28 days after the claim is given to the insurer only on
13 the ground that the insurer has not had time to adequately assess the
14 claim.

15 **112 Rejecting claims after 28 days but within 1 year**

16 If the insurer rejects the injured person's claim 28 days or later, but
17 not later than 1 year, after the claim is given to the insurer, the
18 insurer may—

19 (a) stop weekly compensation to the person 8 weeks after the
20 insurer rejects the claim; and

21 (b) stop payment of compensation mentioned under part 8
22 (Compensation for medical treatment, damage and other costs)
23 for costs incurred 8 weeks or later after the claim is rejected.

24 *Note* For how a claim is rejected, see s 110.

25 **113 Rejecting claims from 1 year**

26 (1) An insurer may reject an injured person's claim for compensation
27 1 year or later after the claim is given to the insurer only with the
28 leave of the Magistrates Court.

- 1 (2) If the Magistrates Court gives leave to the insurer to reject the
2 injured person's claim for compensation—
- 3 (a) the insurer need not give the injured person notice of the
4 rejection if the injured person, or the injured person's lawyer,
5 is present when the court gives leave for the insurer to reject
6 the claim; and
- 7 (b) the insurer may stop paying weekly compensation—
- 8 (i) on the day stated by the court in the order giving leave to
9 the insurer to reject the claim; or
- 10 (ii) 8 weeks after the injured person gets notice of the
11 rejection if no day is stated in the order.
- 12 (3) For this section, the injured person gets notice of the rejection—
- 13 (a) if the injured person is present when the court gives leave to
14 the insurer to reject the claim—on the day the court gives
15 leave; or
- 16 (b) when the injured person receives notice of the rejection from
17 the insurer.
- 18 (4) The regulations may prescribe the how and why the Magistrates
19 Court may approve termination.

20 **Division 12.3 Liability on claims**

21 **114 Without prejudice payments**

22 An insurer may, when making a payment in relation to a claim, state
23 that the payment is not an admission of liability for the injury in
24 relation to which it is made.

1 **115 Liability on claim not accepted or rejected**

- 2 (1) If an injured person makes a claim in relation to an injury, the
3 insurer is liable to pay weekly compensation and compensation for
4 costs in relation to the injury until the insurer rejects or settles the
5 claim.
- 6 (2) A payment under this section may not be recovered by the insurer.

7 **116 Order for refund of overpayments of compensation**

- 8 (1) This section applies to a payment (an *overpayment*) to a person (the
9 *overpaid person*), purportedly made because of an obligation arising
10 under this Act, to which the overpaid person is not entitled under
11 this Act.
- 12 (2) However, this section only applies if the court before which a
13 proceeding for an offence against section 177 (False claims etc) is
14 taken against the overpaid person is satisfied on the balance of
15 probabilities that the person has received an overpayment because or
16 partly because of the act or omission that is alleged to constitute the
17 offence.
- 18 (3) The court may, on the application of the business operator or insurer
19 (whether or not the overpaid person is convicted of the offence),
20 order the overpaid person to refund the amount of the overpayment
21 to the person who made the payment.
- 22 (4) Unless the compensation is payable under an award of a court, the
23 refund may be deducted from future payments of compensation in
24 accordance with the terms of the court's order.
- 25 (5) Subsection (3) applies even if the compensation is weekly
26 compensation that is payable under a direction of a conciliator.
- 27 (6) This section does not limit any other right of recovery that a person
28 may have against someone else in relation to an overpayment to the
29 overpaid person.

Division 12.4 Settlement of claims

117 Contracting out

- (1) A provision of an agreement or other document is void if it purports to exclude, or limit in any way—
- (a) a right given to an injured person under this Act; or
 - (b) a liability imposed on an insured person or a business operator under this Act.
- (2) However, this section does not apply to an agreement by an injured person to commute an existing right to compensation for a compensable injury under this part.

118 How injured person may commute rights

- (1) An insured person may commute, in writing, an existing right to compensation for a compensable injury on payment of an amount by the insurer (the *settlement*).
- (2) The settlement may include a payout of 1 or more of the following:
- (a) the injured person's entitlement to weekly compensation under part 6;
 - (b) the injured person's entitlement to compensation for permanent injuries under part 7;
 - (c) the injured person's entitlement to compensation for medical treatment, damage and other costs under part 8;
 - (d) an entitlement of the injured person to compensation apart from this Act;
 - (e) any other amount.

1 **119 No assignment etc of payout of weekly compensation**

2 A payout of weekly compensation may not—

- 3 (a) be assigned, charged or attached; and
4 (b) pass to anyone else by operation of law; and
5 (c) have a claim set off against it.

Part 13 Vocational rehabilitation

120 Meaning of *approved rehabilitation provider* etc

(1) In this part:

approved rehabilitation provider means a person approved by the Minister to provide vocational rehabilitation for this Act.

(2) The regulations may make provision about the approval of rehabilitation providers, including—

(a) the criteria for approving rehabilitation providers; and

(b) the conditions that may be imposed on the approval of rehabilitation providers; and

(c) how and why the approval of an approved rehabilitation provider may be revoked or suspended.

(3) The regulations may also make provision about the role of approved rehabilitation providers under this Act.

121 Meaning of *vocational rehabilitation* for pt 13

(1) In this part:

vocational rehabilitation, for the injured person, means—

(a) the assessment of the needs of the person for paragraph (b); and

(b) the provision of appropriate, adequate and timely services for the person aimed at maintaining the person in suitable employment or returning the person to suitable employment.

(2) For the definition of *vocational rehabilitation*, services are taken to be appropriate, adequate and timely if they are in accordance with a relevant protocol.

1 **122 Meaning of *protocol* for pt 13 etc**

2 (1) In this part:

3 *protocol* means a protocol about vocational rehabilitation approved
4 under the regulations.

5 (2) The regulations may allow the Minister to approve a protocol about
6 vocational rehabilitation.

7 **123 Vocational rehabilitation**

8 (1) This section applies in relation to an injured person if, before the
9 injury happened, the person was employed.

10 (2) The insurer must provide the person with vocational rehabilitation in
11 accordance with this Act.

12 Maximum penalty: 50 penalty units.

13 (3) The provision of vocational rehabilitation to the injured person is
14 not taken to be an admission of liability for the person's claim for
15 compensation.

16 (4) The regulations may exempt insurers from subsection (2), either
17 completely or in prescribed circumstances.

18 **124 False representation of approval**

19 A person must not pretend to be an approved rehabilitation provider.

20 Maximum penalty: 30 penalty units.
21

125 Approved insurers

- ## 126 Effect of revocation or suspension of approval

- (1) If the approval of the insurer for this Act is revoked or suspended, section 15 (which requires a business operator to have a compulsory insurance policy) applies in relation to an insurance policy (a ***pre-revocation policy***) issued by the insurer when the insurer was approved, or the approval was not suspended, as if the insurer were still approved or the approval not suspended.
- (2) The revocation or suspension of the approval of an insurer does not—
 - (a) annul a pre-revocation policy; or

- 1 (b) affect the liability of the insurer under a pre-revocation policy;
2 or
3 (c) affect the liability of the insurer under section 147 (Funds for
4 payments by nominal insurer).
- 5 (3) However, the regulations may prescribe circumstances in which
6 (and when) a pre-revocation policy issued by an insurer whose
7 approval has been revoked stops being a compulsory insurance
8 policy.

9 **127 Compulsory insurance—insurers**

- 10 (1) An approved insurer must not refuse to issue a compulsory
11 insurance policy required by a business operator for section 15 (1)
12 (Compulsory insurance—business operators).
- 13 Maximum penalty: 100 penalty units.
- 14 (2) An approved insurer must not issue an insurance policy required by
15 a business operator for section 15 (1) that is not a compulsory
16 insurance policy.
- 17 Maximum penalty: 100 penalty units.
- 18 (3) It is not an offence against subsection (1) for an insurer to refuse to
19 issue a compulsory insurance policy if—
- 20 (a) the business operator has not paid for the policy; or
21 (b) the business operator has not given the insurer information
22 reasonably requested by the insurer in relation to the policy.

23 **128 Cancellation**

- 24 An approved insurer may cancel a compulsory insurance policy only
25 in accordance with a protocol about cancellation.
- 26 Maximum penalty: 50 penalty units.

1 **129 Cover notes**

- 2 (1) An insurer must not issue a cover note that is a compulsory
3 insurance policy for longer than 30 days.

4 Maximum penalty: 10 penalty units.

- 5 (2) An insurer may recover a premium from a business operator for a
6 period for which a cover note from the insurer was in force in
7 relation to the business operator if, at the end of the cover note, the
8 business operator does not obtain a policy of insurance from the
9 insurer.

10 **130 Provision of information to Minister**

- 11 (1) This section applies to the following entities:

12 (a) an approved insurer;

13 (b) a self-insurer;

14 (c) if an approved insurer or business operator is a
15 corporation—an officer of the corporation on behalf of the
16 corporation.

- 17 (2) The Minister may, by written notice (an *information notice*) given
18 to an entity to whom this section applies, require the entity to give
19 the Minister, within the reasonable time stated in the notice—

20 (a) details of the number of injuries for which compensation has
21 been paid during the period stated in the notice and the total
22 compensation paid during the period; and

23 (b) any other details relating to the operation of this Act stated in
24 the notice.

- 25 (3) The information notice may require the information to be given in
26 accordance with a protocol.

- 27 (4) The information notice must set out the requirements of
28 subsection (6) in relation to the notice, and the penalty for
29 contravention of subsection (6).

- 1 (5) An entity is not excused from giving details in accordance with the
2 information notice on the ground that giving the details would
3 incriminate, or tend to incriminate, the entity or someone else or
4 would tend to expose the entity to a proceeding for an offence
5 against a law in force in Australia or elsewhere.
- 6 (6) If an entity is required to give details under an information notice,
7 the details given, or any information, document or thing obtained as
8 a direct or indirect consequence of giving the details, is not
9 admissible in evidence against the entity in civil or criminal
10 proceedings in a court other than proceedings for perjury or for an
11 offence against subsection (7).
- 12 (7) An entity must not—
- 13 (a) fail to comply with an information notice given to the entity; or
- 14 (b) give details in response to an information notice given to the
15 entity that are false or misleading in a material particular.
- 16 Maximum penalty: 50 penalty units.

Part 15 The nominal insurer

131 Appointment of nominal insurer

- (1) The Minister may appoint a person to be the nominal insurer for this Act.

Note 1 For the making of appointments (including acting appointments), see *Legislation Act 2001*, div 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain ministerial appointments require consultation with an Assembly committee and are disallowable (see *Legislation Act 2001*, div 19.3.3).

- (2) The appointment must be made on the nomination of the approved insurers or a majority of them or, if there is no such nomination, directly by the Minister.

- (3) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

132 Claims for payment by nominal insurer if liability agreed or established

- (1) This section applies if—

- (a) a claim has been made against a business operator that the business operator is liable to pay compensation under this Act in relation to a compensable injury; and
- (b) in relation to the claim, the business operator has agreed to pay any compensation or the liability of the business operator to pay any compensation has been established; and
- (c) the liability of the business operator to pay the compensation is not completely covered by a compulsory insurance policy; and

- 1 (d) the business operator defaults in payment of any of the
2 compensation for longer than 1 month.
- 3 (2) The person entitled to the compensation may make a claim against
4 the nominal insurer for payment of the amounts of compensation
5 payable and to become payable.
- 6 (3) In this section:
7 *compensation* includes—
- 8 (a) an amount in settlement of a claim for compensation; and
9 (b) costs payable to an injured person by a business operator in
10 relation to a claim for compensation.
- 11 **133 Claims for payment by nominal insurer after final**
12 **judgment**
- 13 (1) This section applies if—
- 14 (a) a final judgment has been obtained against a business operator
15 in relation to the business operator's liability independently of
16 this Act for a compensable injury or a death caused by a
17 compensable injury; and
- 18 (b) execution of the judgment is not stayed; and
- 19 (c) the liability of the business operator under the judgment is not
20 covered, or is not completely covered, by a compulsory
21 insurance policy; and
- 22 (d) the judgment is completely or partly unsatisfied 1 month after
23 the day judgment is obtained.
- 24 (2) The person in whose favour the judgment was given may make a
25 claim against the nominal insurer for payment of the amount by
26 which the judgment remains unsatisfied.

1 **134 Claims for payment by nominal insurer if default on**
2 **agreement**

- 3 (1) This section applies if—
- 4 (a) a business operator has agreed to pay an amount to discharge
5 the business operator's liability independently of this Act in
6 relation to a compensable injury, or a death caused by a
7 compensable injury; and
- 8 (b) the liability of the business operator is not covered, or is not
9 completely covered, by a compulsory insurance policy; and
- 10 (c) the business operator has failed to pay all or part of the amount
11 payable by the business operator under the agreement for
12 1 month or longer.
- 13 (2) The person to whom the amount is payable under the agreement
14 may make a claim against the nominal insurer for payment of the
15 amount the business operator has failed to pay.

16 **135 Timing of claims under pt 15**

- 17 (1) A claim under this part may be made within 1 month after the day
18 the right to make the claim arose or within any further time the
19 Minister allows.
- 20 (2) The Minister may allow further time on an application made before
21 or after the end of the 1 month.

22 **136 Payments by nominal insurer**

- 23 (1) If a person makes a claim against the nominal insurer under this
24 part, the nominal insurer must pay the person—
- 25 (a) if the claim is made under section 132 (Claims for payment by
26 nominal insurer if liability agreed or established)—the
27 compensation payable at the date of the claim or becoming
28 payable afterwards; or

- 1 (b) if the claim is made under section 133 (Claims for payment by
2 nominal insurer after final judgment)—the amount payable for
3 damages and costs under the judgment to which the claim
4 relates; or
- 5 (c) if the claim is made under section 134 (Claims for payment by
6 nominal insurer if default on agreement)—the amount payable
7 by the business operator under the agreement.

8 **137 Reopening agreements and awards**

- 9 (1) This section applies if a claim is made against the nominal insurer
10 under section 132 (Claims for payment by nominal insurer if
11 liability agreed or established).
- 12 (2) The nominal insurer may apply to the Magistrates Court for an order
13 directing that the agreement or award under which the compensation
14 is payable be reopened on the ground that there is reason to believe
15 that the business operator has not honestly tried to protect the
16 business operator's own interests, and taken all reasonable steps to
17 protect the business operator's own interests, in relation to the
18 agreement, the appointment of a committee or the arbitration.
- 19 (3) On the application, the Magistrates Court may order that the
20 agreement or award be reopened.

21 **138 Deciding or redeciding claim**

- 22 (1) If the Magistrates Court makes an order under section 137, the court
23 must decide or redecide the claim for compensation by arbitration.
- 24 (2) The nominal insurer must be a party to the arbitration.
- 25 (3) In an award made by the Magistrates Court under this section, the
26 court may set aside a previous agreement or award.
- 27 (4) If an award of compensation is made against the business operator
28 by the Magistrates Court, the nominal insurer must pay the person
29 entitled the amounts payable under the award.

- 1 (5) An agreement by a person to accept, in settlement of a claim against
2 the nominal insurer, an amount less than the amount payable
3 according to the relevant agreement or award has no effect unless
4 approved by the Magistrates Court.

5 **139 Power of Supreme Court to set aside certain agreements**

- 6 (1) If a claim is made against the nominal insurer under section 134
7 (Claims for payment by nominal insurer if default on agreement),
8 the nominal insurer may apply to the Supreme Court for an order
9 setting aside the agreement to which the claim relates.
- 10 (2) If, on an application under subsection (1), the Supreme Court is
11 satisfied there are reasonable grounds for believing that, in relation
12 to the agreement the subject of the application, the business operator
13 has not honestly tried to protect the business operator's own
14 interests and taken all reasonable steps to protect the business
15 operator's own interests, the court may, by order, set aside the
16 agreement.
- 17 (3) If an agreement is set aside under this section—
- 18 (a) the agreement is, for any proceeding in a court, taken never to
19 have had effect; and
- 20 (b) evidence of a statement or communication, or a part of a
21 statement or communication tending to establish the existence
22 of the agreement is not, unless the Supreme Court directs
23 otherwise, admissible in any proceeding in a court.
- 24 (4) The Supreme Court may give a direction for subsection (3) (b) only
25 if satisfied that the admission of the evidence is necessary to avoid
26 injustice to a party to the proceeding.

1 **140 Costs in proceeding set aside**

- 2 (1) If the Supreme Court sets an agreement aside under section 139, the
3 costs of the respondent of, and incidental to, the application must be
4 paid by the nominal insurer.
- 5 (2) However, the Supreme Court may direct that subsection (1) is not to
6 apply in relation to an application.
- 7 (3) The Supreme Court may give a direction under subsection (2) in
8 relation to an application only if satisfied that, having regard to the
9 special circumstances surrounding the making of the agreement to
10 which the application relates, it is desirable that the direction.

11 **141 Set aside agreements and limitation laws**

- 12 (1) This section applies if—
- 13 (a) an agreement is set aside under section 139 (Power of Supreme
14 Court to set aside certain judgments); and
- 15 (b) apart from this section, an action by a party to the agreement to
16 recover damages in relation to a liability to which the
17 agreement related would be barred by a Territory law (the
18 ***limitation law***) about the limitation of the time within which
19 proceedings in a court may be begun—
- 20 (i) at the time the agreement is set aside; or
- 21 (ii) within 3 months after the agreement is set aside.
- 22 (2) The action may be begun at any time within 3 months after the day
23 the agreement was set aside, regardless of the limitation law.

24 **142 Set aside agreements and further action**

- 25 (1) This section applies if—
- 26 (a) an agreement is set aside under section 139 (Power of Supreme
27 Court to set aside certain judgments); and

Section 143

- 1 (b) an action by a party to the agreement (the *plaintiff*) to recover
2 damages in relation to a liability to which the agreement
3 related is begun in a Territory court.
- 4 (2) Within 7 days after the day the action was begun, the plaintiff must
5 give the nominal insurer written notice of the action.
- 6 Maximum penalty: 5 penalty units.
- 7 (3) If notice is given to the nominal insurer under subsection (2), the
8 nominal insurer—
- 9 (a) may, on behalf of the business operator sued in the action,
10 conduct the defence of the action in the name of the business
11 operator and in the way the nominal insurer considers
12 appropriate; and
- 13 (b) must indemnify the business operator against all costs and
14 expenses of and incidental to the action.

15 **143 Agreement of defendant to certain action by nominal**
16 **insurer**

- 17 The nominal insurer must not, without the consent of the
18 defendant—
- 19 (a) consent to the entry of judgment in an action against the
20 defendant in the action; or
- 21 (b) compromise the action.

22 **144 Intervention by nominal insurer**

- 23 (1) This section applies to a person (the *alleged business operator*)—
- 24 (a) against whom a claim (the *claim*) for compensation has been
25 made; and
- 26 (b) who is not a self-insurer; and
- 27 (c) who is not a party to a compulsory insurance policy that
28 applies to the claim.

- 1 (2) The alleged business operator must give the nominal insurer a copy
2 of the claim not later than 48 hours after the claim is made.
- 3 Maximum penalty: 10 penalty units.
- 4 (3) The alleged business operator must not make an agreement or
5 admission in relation to the claim unless the nominal insurer
6 consents.
- 7 Maximum penalty: 20 penalty units.
- 8 (4) The nominal insurer is entitled to intervene in an arbitration
9 proceeding on the claim as a party.
- 10 (5) The nominal insurer has the same right of objection to arbitration by
11 a committee as the business operator has under the regulations.

12 **145 Nominal insurer may act**

- 13 The nominal insurer may treat a claim for compensation as having
14 been made against the nominal insurer under this part if the nominal
15 insurer—
- 16 (a) receives a copy of the claim under section 144; or
- 17 (b) is otherwise satisfied that it is reasonably likely that there is no
18 compulsory insurance policy in force that applies to the claim.

19 **146 Effects of payment by nominal insurer**

- 20 If the nominal insurer pays an amount under this Act in relation to a
21 liability of a business operator—
- 22 (a) the payment operates, to the extent of the payment, to
23 discharge the liability of the business operator; and
- 24 (b) an amount equal to 3 times the amount of the payment is a debt
25 payable by the business operator to the nominal insurer, and
26 may be sued for and recovered in a court of competent
27 jurisdiction; and

- 1 (c) the nominal insurer has the right of subrogation in relation to
2 any right the business operator has against anyone in relation to
3 the injury that caused the liability of the business operator.

4 **147 Funds for payments by nominal insurer**

- 5 (1) An amount payable to a person by the nominal insurer may be sued
6 for and recovered by the person by action in a court of competent
7 jurisdiction, but the nominal insurer is not liable to satisfy a
8 judgment in such an action except out of money mentioned in
9 subsection (2).
- 10 (2) The nominal insurer must pay amounts payable under this Act out of
11 money provided under this section by approved insurers and
12 self-insurers and any other money received under this Act.
- 13 (3) For subsection (2), amounts payable under this Act include the
14 following:
- 15 (a) the amount of any costs and expenses incurred;
- 16 (b) administrative costs of the nominal insurer.

17 **148 Apportionment of liability of nominal insurer**

- 18 (1) Liability to provide an amount mentioned in section 147 (2) must be
19 apportioned by the nominal insurer among those who were approved
20 insurers or self-insurers at the time of the injury that gave rise to the
21 right to compensation in relation to which the amount is payable.
- 22 (2) In making an apportionment under subsection (1), the nominal
23 insurer must have regard as far as practicable to—
- 24 (a) the premium income received by each approved insurer in
25 relation to compulsory insurance policies in the financial year
26 before the injury; and
- 27 (b) the premium that would have been payable by each self-insurer
28 if the self-insurer had obtained a compulsory insurance policy
29 for the financial year (or the part of the financial year for which
30 the self-insurer was a self-insurer).

- 1 (3) If the nominal insurer makes an apportionment under this section,
2 the nominal insurer must give each approved insurer and self-insurer
3 concerned written details of the apportionment and require the
4 insurer or self-insurer to pay the nominal insurer the apportioned
5 amount, within the time stated in the notice.
- 6 (4) An amount mentioned in a notice to a person under subsection (3)
7 and unpaid at the end of the time stated in the notice is a debt owing
8 to the nominal insurer by the approved insurer or self-insurer.
- 9 (5) If an amount has been given by approved insurers and self-insurers
10 under this section in relation to a payment by the nominal insurer,
11 the nominal insurer must use any amount received in relation to the
12 payment from the defaulting business operator to proportionately
13 reimburse the approved insurers and self-insurers.

14 **149 Information and assistance by business operator to**
15 **nominal insurer**

- 16 (1) For the exercise of his or her functions under this Act, the nominal
17 insurer may, by written notice, require a business operator—
- 18 (a) to give the nominal insurer the information and assistance that
19 the nominal insurer considers necessary; and
- 20 (b) to give the nominal insurer the documents in the business
21 operator's possession that the nominal insurer considers
22 necessary; and
- 23 (c) to sign the documents that the nominal insurer considers
24 necessary for the business operator to sign to allow the nominal
25 insurer to exercise the nominal defendant's functions; and
- 26 (d) to allow the nominal insurer at all reasonable times to inspect
27 the person's business premises.
- 28 (2) A business operator must comply with a requirement of the nominal
29 insurer under subsection (1).
- 30 Maximum penalty: 50 penalty units.

1 **150 Proceedings to be in name of ‘Nominal Insurer’**

2 For this Act, a proceeding by or against the nominal insurer may be
3 taken in the name of ‘the Nominal Insurer’.

Part 16 Compensation and common law remedies

151 Definitions for pt 16

In this part:

damages includes an amount paid under a compromise or settlement of a claim for damages, whether a legal proceeding had been begun or not, but does not include an amount paid for costs incurred in relation to a proceeding in a court.

injury, in relation to a injured person, includes damage to the injured person's contact lenses, crutches, prosthesis, spectacles or other artificial aid.

152 References to person who recovers damage etc

- (1) If damages are recovered by a person on someone else's behalf, a reference in this part to a person who recovers damages is a reference to the person on whose behalf damages are recovered.
- (2) If compensation is paid or payable to a person for the benefit of someone else, a reference in this part to a person to whom compensation is paid or payable is a reference to the person for whose benefit the compensation is paid or payable.

153 Payments by nominal insurer

- (1) If the nominal insurer pays compensation in relation to an injury to a injured person, this part applies as if a reference to the business operator were a reference to the nominal insurer.
- (2) If the nominal insurer and a business operator both pay compensation in relation to an injury suffered by an injured person, the rights of the nominal insurer under this part in relation to the payment have priority over the rights of the business operator.

- 1 **154 Remedies both against business operator and stranger**
- 2 (1) If an injury in relation to which compensation is payable under this
- 3 Act is caused under circumstances that appear to create a legal
- 4 liability in someone (the *other person*) other than the business
- 5 operator to pay damages in relation to the injury—
- 6 (a) the injured person may take action against the other person to
- 7 recover damages and also make a claim against the business
- 8 operator under this Act; and
- 9 (b) if the injured person receives amounts under this Act and
- 10 damages from the other person—the injured person must repay
- 11 to the business operator so much of the amounts as does not
- 12 exceed the amount of the damages received from the other
- 13 person; and
- 14 (c) on notice to the other person, the business operator has a first
- 15 charge on amounts payable by the other person to the injured
- 16 person to the extent of any amounts the business operator has
- 17 paid to the injured person under this Act; and
- 18 (d) if the injured person has received amounts under this Act, but
- 19 no damages or less than the full amount of the damages to
- 20 which the injured person is entitled—the other person must
- 21 indemnify the business operator against so much of the
- 22 amounts paid to the injured person as does not exceed the
- 23 damages for which the other person is liable; and
- 24 (e) payment of an amount by the other person to the business
- 25 operator under paragraph (c) or (d) are, to the extent of the
- 26 amount, a satisfaction of the liability of the other person to the
- 27 injured person.

1 **155 Liability arising independently of Act**

2 (1) Compensation is not payable under this Act in relation to a
3 compensable injury to a injured person to the extent to which—

4 (a) compensation for the injury has been paid under the law of a
5 place outside the ACT; or

6 (b) a judgment or agreement for damages has been obtained in
7 relation to the injury from the business operator independently
8 of this Act.

9 (2) If an injured person or a dependant of a injured person obtains
10 compensation under this Act in relation to an injury to the injured
11 person, and, subsequently in relation to the injury, the person to
12 whom the compensation was paid obtains compensation under a law
13 of a place outside the ACT, or obtains from the business operator a
14 judgment or agreement for damages independently of this Act, the
15 business operator is entitled to recover from the person an amount
16 equal to the least of the following amounts:

17 (a) the amount of the compensation obtained under this Act;

18 (b) if the person has obtained compensation under a law of a place
19 outside the ACT in relation to the injury—the amount of the
20 compensation, unless paragraph (d) applies;

21 (c) if the person has obtained a judgment or agreement for
22 damages independently of this Act in relation to the
23 injury—the amount of the judgment or agreement, unless
24 paragraph (d) applies;

25 (d) if the person has obtained both compensation under a law of a
26 place outside the ACT, and a judgment or agreement for
27 damages independently of this Act, in relation to the
28 injury—the net amount to which the person is entitled under
29 that law in relation to the compensation and the damages.

1 **156 Dependants recovering damages and not claiming**
2 **compensation**

3 (1) This section applies if—

4 (a) a business operator pays compensation to a dependant of a
5 deceased injured person in relation to an injury that caused the
6 death of a injured person; and

7 (b) damages in relation to the injury have been recovered from the
8 business operator or any other person by another dependant (a
9 ***non-claiming dependant***) of the deceased injured person; and

10 (c) no claim for compensation in relation to the injury has been
11 made by or on behalf of the non-claiming dependant.

12 (2) If there is only 1 non-claiming dependant, he or she is liable to pay
13 to the business operator—

14 (a) if the amount of the damages recovered by the non-claiming
15 dependant is less than the total amount of compensation paid to
16 the dependants of the injured person in relation to the injured
17 person's injury—the amount of the damages; or

18 (b) in any other case—the amount of the compensation.

19 (3) If there is more than 1 non-claiming dependant, each non-claiming
20 dependant is liable to pay to the business operator—

21 (a) an amount calculated in accordance with the formula—

22
$$C \times \frac{D}{TD}; \text{ or}$$

23 (b) if the amount of the damages recovered by the non-claiming
24 dependant is less than the amount calculated in accordance
25 with the formula in paragraph (a)—the amount of the damages.

26 (4) In subsection (3):

27 ***C*** means the total amount of the compensation paid in relation to the
28 injured person's injury to dependants of the injured person.

D means the amount of damages recovered by the non-claiming dependant in relation to the injury to the injured person.

TD means the total of the amounts of damages recovered by all the non-claiming dependants.

(5) For subsections (2) and (3), the amount of the compensation paid by the business operator in relation to the injured person's injury does not include—

(a) any amount paid to a dependant of the injured person who is not entitled to recover damages in relation to the injured person's injury; or

(b) any amount paid under this Act, because of the injured person's death, for the benefit of a child who was a dependant of the injured person.

157 Discharge of liability out of payments into court

(1) This section applies if an injured person or a dependant of a deceased injured person is liable under section 154 (Remedies both against the business operator and stranger) or section 156 (Dependants recovering damages and not claiming compensation) to pay an amount to the business operator and the Magistrates Court or any person appointed by the Magistrates Court for the purpose holds on behalf of the injured person or the dependant—

(a) compensation payable for the benefit of, or damages awarded to, the injured person or the dependant; or

(b) investments acquired out of the compensation or damages.

(2) The Magistrates Court or person must deduct from the amount held by the court, or realise any or all of the investments and deduct from the proceeds of the realisation, an amount that is not more than the amount the injured person or dependant is liable to pay the business operator, and pay the amount deducted to the business operator.

Section 157

- 1 The payment of an amount to a business operator under
2 subsection (2) is a discharge of the liability, to the extent of the
3 amount paid—
- 4 (a) of the injured person or dependant to the business operator; and
- 5 (b) of the Magistrates Court or other person to the injured person
6 or dependant.

Part 17 Procedure for payment of compensation

158 Conciliation and arbitration

All matters and questions (other than prosecutions for offences) arising under this Act must, if no other provision is made in this Act, in the absence of agreement, be settled by conciliation or arbitration in accordance with the regulations.

159 Admissibility of statements by injured people

A written statement in relation to an injured person's injury that is given by the injured person to the business operator or to the business operator's insurer must not be admitted in evidence on behalf of the business operator or insurer in any proceeding under this Act unless the business operator or insurer has, not later than 2 weeks before the proceeding is heard, given to the injured person, or his or her lawyer or agent, a copy of the statement.

160 Appeals

- (1) If a committee or the Magistrates Court gives a decision or makes an order or award in relation to any matter that may be or is required to be settled by arbitration under this Act, any party to the arbitration may appeal from the decision, order or award to the Supreme Court.
- (2) The *Magistrates Court (Civil Jurisdiction) Act 1982*, part 21 applies in relation to an appeal under subsection (1)—
 - (a) as if it were an appeal from a judgment or order of a kind mentioned in that Act, section 387 (2); and
 - (b) for an appeal from a decision, order or award by a committee—as if the decision, order or award were a decision, order or award of the Magistrates Court.

- 1 **Part 18** **Review of decisions by**
2 **administrative appeals**
3 **tribunal**
- 4 **161 Notice of reviewable decisions to be given to affected**
5 **people**
- 6 (1) In this part:
- 7 *reviewable decision* means a decision made by the Minister that is
8 prescribed under the regulations.
- 9 (2) If the Minister makes a reviewable decision, the Minister must give
10 written notice of the decision to each person affected by the
11 decision.
- 12 (3) The notice must be in accordance with the requirements of the code
13 of practice in force under of the *Administrative Appeals Tribunal*
14 *Act 1989*, section 25B (1).
- 15 **162 Review by administrative appeals tribunal of reviewable**
16 **decisions**
- 17 A person may apply in writing to the administrative appeals tribunal
18 for review of a reviewable decision within 28 days after receiving
19 notice of the decision.

Part 19 Temporary provisions for acts of terrorism

163 Application of pt 19 to insurers

(1) This part applies to an insurer if—

- (a) the insurer has acted honestly and taken all proper and business-like steps to obtain reinsurance for the insurer's liability to pay compensation for injuries or deaths (or both) caused by acts of terrorism; and
- (b) an act of terrorism happens before 1 April 2004; and
- (c) the insurer accepts liability for claims for compensation for injuries or deaths (or both) caused by the act of terrorism; and
- (d) the insurer has acted honestly and taken all proper and business-like steps to demand the maximum amounts the insurer may demand under the reinsurance contracts held by the insurer that apply in relation to the claims; and
- (e) the total amount paid by the insurer for the claims, after the deduction of the maximum amounts the insurer may receive under the reinsurance contracts, is more than the temporary fund threshold amount that applies to the insurer.

(2) For this part, the *temporary fund threshold amount* that applies to an insurer is the amount worked out using the following formula:

insurer's market share × relevant premium pool amount.

(3) In this section:

insurer's market share means the proportion (expressed as a percentage) of the administrative costs of the Act apportioned by the Minister to the insurer under section 182 (2) (Funds for administration of Act) in relation to the financial year before the act of terror happens.

- 1 ***premium pool*** means the total amount of—
- 2 (a) the premium income received by each approved insurer in
- 3 relation to compulsory insurance policies in the financial year
- 4 before the act of terror happens; and
- 5 (b) the premium that would have been payable by each self-insurer
- 6 if the self-insurer had obtained a compulsory insurance policy
- 7 for the financial year (or the part of the financial year for which
- 8 the self-insurer was a self-insurer).
- 9 ***relevant premium pool amount*** means 5% of the premium pool.

10 **164 Definitions for pt 19**

11 In this part:

12 ***act of terrorism***—see section 165.

13 ***insurer*** means an approved insurer or a self-insurer.

14 ***temporary fund***—see section 166 (1).

15 ***temporary fund threshold amount***—see section 163 (2).

16 **165 Meaning of *act of terrorism* for pt 19**

17 (1) In this part:

18 ***act of terrorism*** means the use or threat of action if—

- 19 (a) the action falls within subsection (2); and
- 20 (b) the use or threat is designed to influence a government or to
- 21 intimidate the public or a section of the public; and
- 22 (c) the use or threat is made for the purpose of advancing a
- 23 political, religious or ideological cause.

24 (2) Action falls within this subsection if it—

- 25 (a) involves serious violence against a person; or
- 26 (b) involves serious damage to property; or

-
- 1 (c) endangers a person's life, other than that of the person
2 committing the action; or
- 3 (d) creates a serious risk to the health or safety of the public or a
4 section of the public; or
- 5 (e) is designed seriously to interfere with or seriously to disrupt an
6 electronic system.
- 7 (3) The use or threat of action falling within subsection (2) that involves
8 the use of firearms or explosives is terrorism whether or not
9 subsection (1) (b) is satisfied.
- 10 (4) In this section:
- 11 *action* includes action outside the ACT or Australia.
- 12 *government* includes the government of another Australian
13 jurisdiction or a foreign country.
- 14 *person* means a person anywhere, whether in or outside the ACT or
15 Australia.
- 16 *property* means property located anywhere, whether in or outside
17 the ACT or Australia.
- 18 *public* includes the public of a place outside the ACT or Australia.

19 **166 Terrorism cover temporary reinsurance fund**

- 20 (1) If this part applies to an insurer, the terrorism cover temporary
21 reinsurance fund (the *temporary fund*) is established.
- 22 (2) The temporary fund consists of—
- 23 (a) the amounts of levies paid by insurers under this part; and
- 24 (b) amounts borrowed by the Territory for the fund; and
- 25 (c) any contributions made by the Territory to the fund; and
- 26 (d) income from the investment of amounts in the fund; and
- 27 (e) any other amounts that may lawfully be paid into the fund.

- 1 (3) The temporary fund is to be managed by the Territory and money
2 paid into it is taken to be trust money under the *Financial*
3 *Management Act 1996*.

4 **167 Entitlement of insurers to reimbursement from temporary**
5 **fund**

- 6 (1) If this part applies to an insurer because of an act of terrorism, the
7 insurer is entitled to be reimbursed from the temporary fund the
8 insurer's uninsured liability for the act of terrorism less the
9 temporary fund threshold amount that applies to the insurer in
10 relation to the act of terrorism.

- 11 (2) However, the insurer is entitled to be fully reimbursed from the
12 temporary fund the insurer's uninsured liability for another act of
13 terrorism that happens—

14 (a) before 1 April 2004; and

15 (b) not later than 1 year after the day the act of terrorism
16 mentioned in subsection (1) happens.

- 17 (3) Subsection (2) applies only if the insurer has acted honestly and
18 taken all proper and business-like steps to—

19 (a) obtain reinsurance for the insurer's liability to pay
20 compensation for injuries or deaths (or both) caused by the
21 later act of terrorism; and

22 (b) demand the maximum amounts the insurer may demand under
23 the reinsurance contracts held by the insurer that apply in
24 relation to the later act of terrorism.

- 25 (4) In this section:

26 *insurer's uninsured liability*, for an act of terrorism, means the total
27 of the amounts paid by the insurer for claims for compensation for
28 injuries or deaths (or both) caused by the act of terrorism less all
29 amounts that are recoverable (or to the extent that they are
30 recoverable) by the insurer under the reinsurance contracts held by
31 the insurer that apply in relation to the claims.

1 **168 Payments out of temporary fund**

2 The temporary fund may be used to—

- 3 (a) pay any amount required under this part to be paid from the
4 fund; and
- 5 (b) repay any amount borrowed for, or contributed by the Territory
6 to, the fund; and
- 7 (c) pay interest on an amount mentioned in paragraph (b).

8 **169 Regulations about temporary fund**

9 (1) The regulations may make provision in relation to the temporary
10 fund, including—

- 11 (a) the imposition of levies on insurers for the fund; and
- 12 (b) payments from the fund.

13 (2) In particular, the regulations may make provision in relation to—

- 14 (a) levies for the fund, including their rate; and
- 15 (b) payments to the fund, including contributions by the Territory
16 to the fund; and
- 17 (c) payments from the fund, including the information insurers
18 claiming an entitlement to reimbursement from the fund must
19 give to the fund's manager.

20 (3) However, the regulations must not impose a levy for a period that
21 is—

- 22 (a) for an approved insurer—more than 10% of the premiums
23 received by the insurer in relation to compulsory insurance
24 policies issued by the insurer that begin during the period; and
- 25 (b) for a self-insurer—more than 10% of the estimated premium
26 that would have been payable by the self-insurer for a
27 compulsory insurance policy obtained by the self-insurer that
28 began at the beginning of the period.

1 **170 Exclusion of Corporations legislation**

- 2 (1) The temporary fund is declared to be an excluded matter for the
3 purposes of the Corporations Act, section 5F in relation to the whole
4 of the Corporations legislation to which the Corporations Act,
5 part 1.1A (Interaction between Corporations Legislation and State
6 and Territory laws) applies.

7 *Note* The Corporations Act, s 5F provides that if a State or Territory law
8 declares a matter to be an excluded matter for the purposes of that
9 section in relation to all or part of the Corporations legislation to which
10 the Corporations Act, pt 1.1A applies (see s 5D), the provisions that are
11 the subject of the declaration will not apply in relation to that matter in
12 the State or Territory that made the declaration.

- 13 (2) Without limiting subsection (1) and to remove any doubt, an act or
14 omission by an entity in relation to the fund is declared to be an
15 excluded matter for the purposes of the Corporations Act, section 5F
16 in relation to the whole of the Corporations legislation to which the
17 Corporations Act, part 1.1A applies.

18 **171 Expiry of pt 19**

19 This part expires on 1 October 2004.

Part 20 Miscellaneous

172 Premiums—maximum rates

An insurer must not charge, or accept, a premium for a compulsory insurance policy that is greater than the premium worked out in accordance with the maximum rate of premium prescribed under the regulations.

Maximum penalty: 50 penalty units.

173 Injured peoples' rights to information

(1) If an injured person injured on a business operator's business premises asks the business operator for the name and address of the person who was the business operator's approved insurer on a stated date, the business operator must—

(a) if the business operator was not a self-insurer on the date—tell the injured person the name and address of the approved insurer, or each approved insurer, who issued a compulsory insurance policy to the business operator that was current on the date; or

(b) if the business operator was a self-insurer on the date—tell the injured person that.

Maximum penalty: 20 penalty units.

(2) A business operator must keep displayed, in accordance with subsection (3), a notice containing a summary of the requirements of this Act for making compensation claims that states—

(a) that claim forms for compensation are available from the business operator on request and free of charge; and

(b) if the business operator is a party to a compulsory insurance policy—the approved insurer's name and address; and

Section 174

- 1 (c) if the business operator is a self-insurer—that the business
2 operator is exempt from the requirement to obtain insurance
3 under this Act.

4 Maximum penalty: 10 penalty units.

5 *Note* If a form is approved under s 184 (Approved Forms) for a notice, the
6 form must be used.

- 7 (3) The business operator must display the notice in a conspicuous
8 place so that it can be conveniently read by members of the public.

- 9 (4) A business operator must ensure that claim forms are available
10 during business hours to members of the public on the business
11 premises on request and free of charge.

12 Maximum penalty: 10 penalty units.

13 *Note* If a form is approved under s 184 (Approved Forms) for a notice, the
14 form must be used.

15 **174 Confidentiality**

16 A person must not, other than for this Act or as required by law,
17 make a record of or divulge or communicate to anyone else
18 information or a document that the person acquired under this Act.

19 Maximum penalty: 50 penalty units, imprisonment for 6 months or
20 both.

21 **175 Medical referees**

- 22 (1) The Minister may appoint, in writing, 1 or more doctors to be
23 medical referees for this Act.

- 24 (2) The Minister may appoint a doctor to be a medical referee only if
25 satisfied that the doctor has the experience and expertise to
26 adequately perform the duties of a medical referee.

- 27 (3) A medical referee must not act as medical referee in relation to an
28 injury if the medical referee's services have been used as a doctor in
29 relation to the injury by, or on behalf of, the business operator,
30 injured person or insurer.

1 (4) A person appointed to be a medical referee is to be paid the fees
2 decided by the Minister for the exercise of the person's functions as
3 a medical referee.

4 (5) An appointment under subsection (1) is a notifiable instrument.

5 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

6 **176 Time for beginning prosecutions for certain offences**

7 A prosecution for an offence against section 15 (Compulsory
8 insurance—business operators) may be begun within 5 years after
9 the commission of the offence.

10 *Note* The *Legislation Act 2001*, s 192 deals with when prosecutions for other
11 offences against the Act must be begun.

12 **177 False claims etc**

13 (1) A person must not make a statement knowing that it is false or
14 misleading in a material particular—

15 (a) in a notice given by the person under this Act; or

16 (b) in a claim for compensation made by the person; or

17 (c) in a medical certificate or other document that relates to a
18 claim for compensation; or

19 (d) when giving information to someone about a claim for
20 compensation (whether the information is given by the person
21 who made the claim or not).

22 Maximum penalty: 50 penalty units, imprisonment for 6 months or
23 both.

24 (2) This section does not apply to statements—

25 (a) made in documents filed, or information given, in a court
26 proceeding; or

1 (b) made in a document or information if the person who made the
2 statement did not know that the document or information was
3 to be given in relation to a claim for compensation.

4 (3) This section applies to a statement even if it has been verified by
5 statutory declaration.

6 **178 Acts and omissions of representatives**

7 (1) In this section:

8 *representative* means—

9 (a) for a corporation—an executive officer, employee or agent of
10 the corporation; or

11 (b) for an individual—an employee or agent of the individual.

12 *state of mind*, of a person, includes—

13 (a) the person's knowledge, intention, opinion, belief or purpose;
14 and

15 (b) the person's reasons for the intention, opinion, belief or
16 purpose.

17 (2) This section applies to a prosecution for an offence against this Act.

18 *Note* A reference to an offence against a Territory law includes a reference to
19 an offence against the *Crimes Act 1900*, pt 9 (Aiding and abetting,
20 accessories, attempts, incitement and conspiracy) that relates to the law
21 (see *Legislation Act 2001*, s 189).

22 (3) If it is relevant to prove a person's state of mind about an act or
23 omission, it is enough to show—

24 (a) the act was done or omission made by a representative of the
25 person within the scope of the representative's actual or
26 apparent authority; and

27 (b) the representative had the state of mind.

28 (4) An act done or omitted to be done on behalf of a person by a
29 representative of the person within the scope of the representative's

1 actual or apparent authority is taken to have been done or omitted to
2 be done also by the person, unless the person establishes that
3 reasonable precautions were taken and appropriate diligence was
4 exercised to avoid the act or omission.

- 5 (5) An individual who is convicted of an offence cannot be punished by
6 imprisonment for the offence if the individual would not have been
7 convicted of the offence without subsection (3) or (4).

8 **179 Criminal liability of executive officers of corporation**

- 9 (1) If a corporation commits an offence against this Act (other than
10 against section 15 (Compulsory insurance—business operators)), an
11 executive officer of the corporation—

12 (a) commits the offence; and

13 (b) is liable, on conviction, to a penalty not exceeding the
14 maximum penalty that may be imposed for the commission of
15 the offence by an individual.

- 16 (2) It is a defence to a prosecution for an offence against subsection (1)
17 that—

18 (a) the defendant exercised due diligence to prevent the
19 corporation from doing the act or making the omission alleged
20 to constitute the offence or an element of the offence
21 committed by the corporation; or

22 (b) an officer or employee of the corporation in the defendant's
23 position could not reasonably have been expected to know of
24 the contravention; or

25 (c) the corporation would not have been found guilty of the
26 offence because it could have established a defence available
27 to it for the offence.

- 28 (3) An executive officer may, under subsection (1), be prosecuted for
29 and convicted of an offence whether or not the corporation has been
30 prosecuted for or convicted of the offence.

1 **180 Rules of court**

2 The Executive may make rules in relation to the procedure of the
3 Magistrates Court for this Act.

4 *Note* Rules must be notified, and presented to the Legislative Assembly,
5 under the *Legislation Act 2001*.

6 **181 Directions about procedure**

7 (1) If the procedure for taking a step in a proceeding is not prescribed
8 under this Act, the Chief Magistrate may, in writing, give directions
9 about the procedure to be followed for the step.

10 (2) A direction is a notifiable instrument.

11 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

12 (3) If the procedure for taking a step in a proceeding is not prescribed
13 under this Act (including under a direction mentioned under
14 subsection (1)), the Magistrates Court may give directions about the
15 procedure to be followed in relation to the step.

16 **182 Funds for administration of Act**

17 (1) The costs of administration of this Act must be paid out of amounts
18 provided in accordance with this section by approved insurers and
19 self-insurers and any other amounts received under this Act.

20 (2) Liability for the costs of administration of this Act in relation to a
21 financial year must be apportioned by the Minister among those
22 who were approved insurers or self-insurers during the year.

23 (3) In making an apportionment under subsection (2) for a financial
24 year, the Minister must have regard as far as practicable to—

25 (a) the premium income received by each approved insurer in
26 relation to compulsory insurance policies in the financial year;
27 and

28 (b) the premium that would have been payable by each self-insurer
29 if the self-insurer had obtained a compulsory insurance policy

1 for the financial year (or the part of the financial year for which
2 the self-insurer was a self-insurer).

3 (4) If the Minister makes an apportionment under this section, the
4 Minister must give each approved insurer and self-insurer concerned
5 written details of the apportionment and require the insurer or
6 self-insurer to pay to the Territory the apportioned amount, within
7 the time stated in the notice.

8 (5) An amount mentioned in a notice to a person under subsection (4)
9 and unpaid at the end of the time stated in the notice is a debt owing
10 to the Territory by the approved insurer or self-insurer.

11 (6) Money received under this section must be paid into a departmental
12 bank account maintained by the chief executive under the *Financial*
13 *Management Act 1996*, section 34 (2).

14 **183 Determination of fees**

15 (1) The Minister may, in writing, determine fees for this Act.

16 *Note* The *Legislation Act 2001* contains provisions about the making of
17 determinations and regulations relating to fees (see pt 6.3).

18 (2) A determination is a disallowable instrument.

19 *Note* A disallowable instrument must be notified, and presented to the
20 Legislative Assembly, under the *Legislation Act 2001*.

21 **184 Approved forms**

22 (1) The Minister may, in writing, approve forms for this Act.

23 (2) If the Minister approves a form for a particular purpose, the
24 approved form must be used for that purpose.

25 *Note* For other provisions about forms, see *Legislation Act 2001*, s 255.

26 (3) An approved form is a notifiable instrument.

27 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

1 **185 Regulation-making power**

2 (1) The Executive may make regulations for this Act.

3 *Note* Regulations must be notified, and presented to the Legislative
4 Assembly, under the *Legislation Act 2001*.

5 (2) The regulations may make provision in relation to the following:

- 6 (a) medical assessments of injured people;
- 7 (b) the use of medical specialists in relation to compensable
8 injuries;
- 9 (c) the functions of medical referees appointed under this Act;
- 10 (d) what compulsory insurance policies must, and must not,
11 include;
- 12 (e) how the performance of brokers and agents in relation to
13 compensation under this Act may be monitored;
- 14 (f) the maximum fees and expenses that may be required for
15 matters dealt with under this Act in relation to the following:
- 16 (i) medical examinations or medical treatment;
- 17 (ii) legal services;
- 18 (iii) retraining services;
- 19 (iv) investigative services;
- 20 (g) fees and expenses that may not, or may not for a period, be
21 claimed from a injured person for a service provided in relation
22 to a compensable injury;
- 23 (h) the action that may be taken in relation to an approved insurer,
24 self-insurer or approved rehabilitation provider in
25 circumstances prescribed under the regulations, including an
26 order that an insurer or provider pay to the Territory an amount
27 of not more than \$1 000;
- 28 (i) the accreditation of people to act as injury managers;

- 1 (j) arbitration of matters and questions arising under this Act,
2 including provision for the exclusion or modification of the
3 *Commercial Arbitration Act 1986* in its application to such an
4 arbitration;
- 5 (k) protocols that may be approved by the Minister for this Act
6 and how they may be approved;
- 7 (l) the approval of brokers for this Act, including—
- 8 (i) the factors to be taken into account in deciding whether
9 to approve brokers; and
- 10 (ii) the conditions that may be imposed on approvals; and
- 11 (iii) how approvals may be renewed, suspended and revoked.
- 12 (3) The regulations may also prescribe offences for contraventions of
13 the regulations and prescribe maximum penalties of not more than
14 10 penalty units for offences against the regulations.

Schedule 1 Compensation for permanent injuries

(see s 47)

column 1 item	column 2 nature of injury	column 3 % of maximum amount payable
	Speech loss	
1	loss of power of speech	60
	Sensory loss	
2	loss of sense of taste or smell	17
3	loss of senses of taste and smell	34
	Hearing loss	
4	loss of hearing of both ears	65
5	loss of hearing of 1 ear	20
	Loss of vision	
6	loss of sight of both eyes	100
7	loss of sight of an only eye	100
8	loss of sight of 1 eye, together with serious diminution of the sight of the other eye	75
9	loss of sight of 1 eye	40
10	loss of binocular vision (if not otherwise compensable under this schedule)	40
11	loss of eyeball (in addition to compensation for loss of sight of the eye)	22
	Arm injuries	
12	loss of right arm at or above elbow	80
13	loss of right arm below elbow	75
14	loss of left arm at or above elbow	75
15	loss of left arm below elbow	70
	Hand injuries	
16	loss of right hand	70
17	loss of left hand	65
18	loss of thumb of right hand	30
19	loss of thumb of left hand	26
20	loss of a joint of thumb	16
21	loss of forefinger of right hand	21
22	loss of forefinger of left hand	18

column 1 item	column 2 nature of injury	column 3 % of maximum amount payable
23	loss of 2 joints of forefinger of right hand	16
24	loss of 2 joints of forefinger of left hand	12
25	loss of first joint of forefinger of right hand	10
26	loss of first joint of forefinger of left hand	9
27	loss of middle finger of either hand	12
28	loss of 2 joints of middle finger of either hand	10
29	loss of first joint of middle finger of either hand	6
30	loss of little or ring finger of either hand	11
31	loss of 2 joints of little or ring finger of either hand	9
32	loss of first joint of little or ring finger of either hand	6
	Leg injuries	
33	loss of either leg at or above knee	75
34	loss of either leg below knee	70
	Foot injuries	
35	loss of a foot	65
36	loss of great toe of either foot	22
37	loss of a joint of great toe of either foot	10
38	loss of any other toe	6
39	loss of any joint of any other toe	2
	Bowel injury	
40	permanent loss of bowel function	65
	Loss of sexual organs etc	
41	loss of sexual organs	47
42	loss of both breasts	47
43	loss of 1 breast	30
44	permanent and total loss of capacity to engage in sexual intercourse	75
	Brain damage	
45	permanent brain damage if not, or not completely an injury otherwise compensable under this schedule	100
	Permanent impairment of back, neck, pelvis	
46	permanent impairment of back	60
47	permanent impairment of neck	40
48	permanent impairment of pelvis	15
	Disfigurement	
49	severe facial disfigurement if not, or not completely, an injury otherwise compensable under this schedule	80
50	severe bodily disfigurement if not, or not completely, an	50

Schedule 1 Compensation for permanent injuries

column 1 item	column 2 nature of injury	column 3 % of maximum amount payable
	injury otherwise compensable under this schedule	
	Disease	
51	HIV infection (Human Immunodeficiency Virus infection)	100
52	AIDS (Acquired Immune Deficiency Syndrome)	100

Dictionary

(see s 3)

ABS means the Australian Bureau of Statistics established under the *Australian Bureau of Statistics Act 1975* (Cwlth).

approved rehabilitation provider—see section 120.

at—a business is operated **at** premises if the business is operated on or from the premises.

AWE means the *Average weekly earnings*, States and Territories, seasonally adjusted for the ACT (all males total earnings) issued by the ABS.

AWE indexed—see section 11.

business operator—see section 9.

business operator's injury notice, for part 11 (Injury management process)—see section 80 (2).

child, in relation to an injured person, means an unmarried child of the person who is—

(a) younger than 16; or

(b) a full-time student.

commercial premises—see section 8.

compensable injury means an injury to which compensation is payable under this Act.

compensation means an amount payable under this Act in relation to an injury to, or the death of, a person.

compulsory insurance policy—see section 14.

cpi indexed—see section 11.

1 **damages**, for part 16 (Compensation and common law
2 remedies)—see section 151.

3 **deductible proportion**, for part 7 (Compensation for permanent
4 injuries)—see section 56 (1) (Deduction for previous injury or
5 pre-existing condition).

6 **executive officer**, of a corporation, means a person, by whatever
7 name called and whether or not the person is a director of the
8 corporation, who is concerned with, or takes part in, the
9 corporation's management.

10 **given**, for div 12.2 (Time for accepting or rejecting claims)—see
11 section 108.

12 **incapacity date**, for an injured person, means—

13 (a) the date of the beginning of the period of the person's
14 incapacity for work; or

15 (b) if the person has been incapacitated for work because of the
16 same injury for a number of separate periods—the date of
17 beginning of the last period of incapacity; or

18 (c) if the person is dead and the death was not immediately
19 preceded by a period of incapacity for work in relation to
20 which the person received compensation under this Act—the
21 date of the worker's death.

22 **injured person**—see section 20 (1).

23 **injured person's injury notice**, for part 11 (Injury management
24 process)—see section 80 (1).

25 **injury**—

26 (a) for part 11 (Injury management process)—see section 74; and

27 (b) for part 16 (Compensation and common law remedies)—see
28 section 151; and

29 (c) see section 7.

1 ***injury management***, for part 11 (Injury management process)—see
2 section 74.

3 ***injury management program***, for part 11 (Injury management
4 process)—see section 74.

5 ***initial loss***, for part 7 (Compensation for permanent injuries)—see
6 section 56 (1).

7 ***insured person***, for part 11 (Injury management process)—see
8 section 74.

9 ***insurer***—see section 10.

10 ***loss***, for part 7 (Compensation for permanent injuries)—see section
11 44.

12 ***maximum loss amount***, for part 7 (Compensation for permanent
13 injuries)—see section 46.

14 ***nominated treating doctor***, for part 11 (Injury management
15 process)—see section 74.

16 ***partially incapacitated***—see section 13.

17 ***personal injury plan***, for part 11 (Injury management process)—see
18 section 74.

19 ***protocol***—

20 (a) for part 13 (Vocational rehabilitation)—see section 122; and

21 (b) means a protocol approved for this Act.

22 ***reviewable decision***, for part 18 (Review of decisions by
23 administrative appeals tribunal)—see section 161.

24 ***single loss amount***, for part 7 (Compensation for permanent
25 injuries)—see section 45.

26 ***statutory floor*** means the federal minimum wage decided from time
27 to time by the Australian Industrial Relations Commission under the
28 *Workplace Relations Act 1996* (Cwlth).

- 1 ***totally incapacitated***—see section 12.
- 2 ***vocational rehabilitation***, for part 13 (Vocational
- 3 rehabilitation)—see section 121.
-

Endnote

Penalty units

The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.