



Australian Capital Territory

# **Workers Compensation Act 1951 No 2**

## **Republication No 7**

Republication date: 9 November 2001

Last amendment made by Act 2001 No 81

Amendments incorporated to 28 September 2001

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Workers Compensation Act 1951* as in force on 9 November 2001. It includes any amendment, repeal or expiry affecting the republished law to 28 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
28 September 2001



Australian Capital Territory

# Workers Compensation Act 1951

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Amendments incorporated to  
28 September 2001



Australian Capital Territory

# Workers Compensation Act 1951

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An Act relating to compensation to workers for injuries arising out of or in the course of their employment, and for other purposes

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## **U** Part 1 Preliminary

### **U** 1 Short title

This Act may be cited as the *Workers Compensation Act 1951*.

### **U** 6 Interpretation

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***approved insurer*** means an insurer approved by the Minister under section 17.

***base figure*** means an amount specified in section 10 (1), 12 (1) or schedule 1 in respect of an employer's liability under this Act.

***chiropractor*** means a person entitled to practise as a chiropractor under the *Chiropractors and Osteopaths Act 1983* or a corresponding law of a State or another Territory.

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

***court*** means the Magistrates Court.

***defined offence*** means—

- (a) an offence against this Act; or
- (b) an offence against the *Crimes Act 1900*, part 8 (Aiding and abetting, accessories, attempts, incitement and conspiracy) in relation to an offence against this Act.

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

***dependant***, in relation to a deceased worker, means—

- (a) a member of the family of the worker; and
- (b) a person to whom the worker stood in loco parentis or who stood in loco parentis to the worker; and
- (c) any exnuptial child or grandchild of the worker; and
- (d) if the worker was an exnuptial child, any parent or grandparent of the worker;

who was wholly or in part dependent on the worker's earnings at the date of the worker's death or who would, but for the worker's incapacity due to the injury, have been so dependent.

***determined categories of workers*** means the categories determined by the Minister under section 6B.

***disease*** includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development, and also includes the aggravation, acceleration or recurrence of a pre-existing disease.

***employer*** includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer, and where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the worker while the worker is working for that other person.

***employer's insurer***, in relation to an employer, means the insurer with whom the employer has entered into a prescribed insurance policy.

***exempt employer*** means an employer exempt under section 17C (1) from compliance with section 17B (1) and (2).

***index number*** means the Consumer Price Index (All Groups) for Canberra published from time to time by the Commonwealth Statistician.

***injury*** means any physical or mental injury (including stress) includes aggravation, acceleration or recurrence or a pre-existing injury.

***inspector*** means an inspector under section 23D.

***medical treatment*** means—

- (a) an examination, test or analysis, conducted by or under the direction, or at the request, of a medical practitioner for the purpose of diagnosing an injury; or
- (b) medical or surgical treatment by a medical practitioner; or
- (c) dental treatment by a dentist or a dental prosthetist; or
- (d) chiropractic treatment by a chiropractor; or
- (e) treatment by a psychologist; or
- (f) therapeutic treatment by a masseur, osteopath, physiotherapist, remedial kinesiologist or speech therapist; or
- (g) therapeutic treatment (including treatment by a psychologist) given on referral by a medical practitioner or dentist; or
- (h) the provision of skiagrams; or
- (i) the provision, repair or replacement of contact lenses, crutches, prostheses, spectacles or other artificial aids; or
- (j) any consultation, examination, therapeutic treatment or other service reasonably rendered in connection with any treatment referred to in paragraph (c), (d), (f), (g), (h) or (i); or
- (k) treatment and maintenance as a patient at a hospital; or
- (l) the provision of nursing attendance, medicines, medical and surgical supplies and curative apparatus in a hospital or otherwise.

***member of the family***, in relation to a worker or an employer, means the grandchild, child, stepchild, adopted child, sister, brother,

half-sister, half-brother, spouse, parent, step-parent, mother-in-law, father-in-law or grandparent of the worker or employer.

***nominal insurer*** means the nominal insurer appointed under section 18B (1).

***osteopath*** means a person entitled to practise osteopathy under the *Chiropractors and Osteopaths Act 1983* or a corresponding law of a State or another Territory.

***outworker*** means a person to whom articles or material are given out to be treated or manufactured in the person's own home or on other premises not under the control or management of the person who gave out the articles or materials.

***overtime*** includes—

- (a) any duty on shifts or on Saturdays, Sundays or other holidays; and
- (b) excess travelling time.

***physiotherapist*** means a person entitled to practise as a physiotherapist under the *Physiotherapists Act 1977* or a corresponding law of a State or another Territory.

***prescribed insurance policy*** means a policy referred to in section 16 (1).

***professional sporting activity*** means—

- (a) participation for fee or reward as a contestant in a sporting or athletic activity; or
- (b) training or preparation for such participation; or
- (c) travelling to or from a place for the purpose of such participation, training or preparation;

but does not include an activity referred to in subsection (4B), (4C) or (4D).

**registered auditor** means an auditor, registered under the Corporations Act, part 9.2, division 2.

**speech therapist** means—

- (a) a person entitled to practise as a speech therapist under a law of the Territory, a State or another Territory; or
- (b) a person who is a member of the Australian Association for Speech and Hearing.

**spouse**, in relation to an injured or deceased worker, includes a person of the opposite sex to the worker who lives, or, in relation to a deceased worker, lived immediately before the worker's death, with the worker as the worker's spouse on a genuine domestic basis although not legally married to the worker.

**therapeutic treatment** includes an examination, test or analysis done for the purpose of diagnosing, or treatment given for the purpose of alleviating, an injury.

**worker** means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether the contract is express or implied, oral or in writing, but does not include—

- (a) a person whose employment is of a casual nature and who is employed otherwise than for the employer's trade or business; or
- (b) a public servant; or
- (c) an employee within the meaning of the *Commonwealth Employees Rehabilitation and Compensation Act 1988* (Cwlth).

**worker of this Territory** means a worker who is a worker of this Territory within the meaning given by section 7A.

- (1A) In the definition of **injury** in subsection (1), a reference to mental injury or stress shall not be taken to include a mental injury or stress

wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of an employer with respect to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker.

- (2) A member of the family of the employer dwelling in the home of the employer shall not, for this Act, be deemed to be a worker unless the employer discloses to the insurer of the employer's liability under this Act, at the time when the employment is commenced and, thereafter, whenever the insurance is renewed, the name, nature of employment and estimated wages of the member of the family.
  - (3) Where a contract to perform any work exceeding \$10 in value (not being work incidental to a trade or business regularly carried on by the contractor in the contractor's own name), or to perform any work as an outworker, is made with the contractor, who neither sublets the contract, nor employs workers, the contractor shall, for this Act, be deemed to be a worker employed by the person who made such contract with the contractor.
- (3A) Where—
- (a) a person (the *principal*) in the course of or for the purpose of the principal's trade or business enters into a contract with any other person or persons (the *contractor*) under which the contractor agrees—
    - (i) to fell trees or cut firewood and deliver the felled trees or firewood to the principal; or
    - (ii) to fell trees or cut scrub on land in the occupation of the principal; or
    - (iii) to clear stumps or logs from land in the occupation of the principal; or
    - (iv) to carry out for the principal 1 or more of the services of logging (including felling, crosscutting, snigging,

loading, carting, bundling and debarking), clearing of timber, preparing land for planting trees, planting trees, pruning trees, or coppice cleaning; and

- (b) the contractor does not either sublet the contract or employ workers, or although employing workers, actually performs any part of the work himself or herself;

the contractor shall for this Act, be deemed to be working under a contract of service with an employer and the principal shall be deemed to be the employer of the contractor.

- (3B) Subsection (3A) does not apply in a case where, in relation to the relevant contract, being a contract referred to in that subsection, the Territory would be the principal within the meaning of that subsection.

- (3C) A person whose employment is of a casual nature and who is employed otherwise than for the purposes of his or her employer's trade or business shall, where the employment was found for him or her by a person who carries on the business of an employment agent, be deemed for this Act to be a worker employed by that employment agent.

- (4) A salesperson, canvasser, collector or person paid wholly or partly by commission shall, for this Act, be deemed to be a worker in the employment of the person by whom the commission is payable, unless the commission is received by the salesperson, canvasser, collector or person for, or in connection with, work incidental to a trade or business regularly carried on by him or her or by a firm of which he or she is a member.

- (4AA) A person engaged for fee or reward to participate as a referee or umpire in a sporting contest shall, for this Act, be deemed to be a worker employed by the person conducting the contest.

- (4B) A person engaged for fee or reward to ride or drive in a horse or pony race conducted by a racing club or association shall, for this



Act, be deemed to be a worker employed by the club or association conducting the race.

- (4C) A person engaged for fee or reward as a rider or driver for the purpose of preparing a horse or pony for racing in a horse or pony race to be conducted by a racing club or association shall, for this Act, be deemed to be a worker employed by the trainer of the horse or pony.
- (4D) A person engaged for fee or reward to take part as a boxer or wrestler in a boxing or wrestling contest shall, for this Act, be deemed to be a worker employed by the person conducting the contest.
- (4E) For subsections (4AA) and (4D), a person engaged to take part as a boxer, wrestler or referee in an amateur boxing or wrestling contest shall not, by reason only of the offering or awarding of a trophy or certificate as a prize in the contest, be taken to be engaged for fee or reward.
- (7) Any reference in the provisions of this Act applicable to a worker after the date of the injury shall be read as including a reference to a former worker.

## **U** 6A Religious workers

- (1) The Minister may, in writing, in accordance with a request by—
- (a) a religious organisation; or
  - (b) a person acting on behalf of a religious organisation;

declare that each person included in a specified class of persons is a worker whose employer is a specified person in that organisation, and whose employment is of a specified nature.

- (2) A declaration is a notifiable instrument.

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

- (3) Where the Minister makes a declaration under subsection (1), then, for this Act—
- (a) a person included in a class of persons specified in the declaration is to be taken to be a worker; and
  - (b) the person specified in the declaration as the employer of persons in that class is to be taken to be their employer; and
  - (c) employment of the nature specified in the declaration is to be taken to be employment undertaken by persons in that class.

**U 6B Determined categories of workers**

- (1) The Minister may, in writing, determine categories of workers for sections 18 (1) (b) (i) and 23F (1) (b) (i) and schedule 3.
- (2) A determination is a notifiable instrument.

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

**U Part 2 Entitlement to compensation****U 7 Compensation for personal injury**

- (1) Where a worker suffers personal injury arising out of or in the course of the worker's employment, the employer is liable to pay compensation in accordance with schedule 1.
- (2) Where a worker is required by the terms of his or her employment, or is expected by his or her employer, to attend a trade, technical or other training school, that employment is, for this Act, to be taken to include that attendance.
- (3) If it is proved that the injury to a worker is attributable to the worker's serious and wilful misconduct, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.
- (4) Compensation shall not be payable where the injury to, or death of, a worker is caused by an intentionally self-inflicted injury.
- (5) An amount of compensation payable under a provision of this Act in respect of an injury is, unless the contrary intention appears, in addition to any amounts of compensation paid or payable under any other provision of this Act in respect of that injury.

**U 7A Compensation limited to Territory workers**

- (1) An employer is liable to pay compensation only in respect of an injury suffered by a worker of this Territory.
- (2) For this Act, a worker is a worker of whichever Territory or State is—
  - (a) the Territory or State in which the worker usually carries out the work of the employment concerned; or

- (b) if no Territory or State, or no single Territory or State, is identified by paragraph (a)—the Territory or State in which the worker's base for the purposes of that employment is located; or
  - (c) if no Territory or State, or no single Territory or State, is identified by paragraph (a) or (b)—the Territory or State in which the worker was hired for or otherwise taken into that employment.
- (3) If a worker usually carries out the work of his or her employment in a particular Territory or State (the *home Territory or State*), but under a defined temporary arrangement carries out that work elsewhere (whether within or outside Australia), the worker is nevertheless to be regarded as a worker of the home Territory or State while carrying out the work elsewhere.
- (4) A worker who is not otherwise a worker of this Territory is to be taken to be a worker of this Territory if the worker—
- (a) receives an injury in this Territory; and
  - (b) is not a worker of any other Territory or any State; and
  - (c) is not entitled to compensation in respect of the injury under the enacted law of a place outside Australia.
- (5) In subsection (3):

*defined temporary arrangement*, in relation to the employment of a worker, means an arrangement that is part of that employment for the worker to carry out the work of the employment for a period that may reasonably be thought likely to be of less than 6 months duration.

## **U** 7B Injury outside Australia

Subject to this Act, compensation is payable in respect of an injury to a worker of this Territory suffered while the worker was outside Australia.

**7C When is a worker taken to be totally incapacitated?**

- (1) For this Act, a worker is taken to be totally incapacitated for work if—
  - (a) a doctor certifies that the worker is partially incapacitated for work; and
  - (b) the partial incapacity prevents the worker from performing the duties the worker performed before becoming incapacitated; and
  - (c) the employer cannot provide appropriate alternative employment; and
  - (d) the worker cannot find appropriate alternative employment.
- (2) For subsection (1), the worker is taken to be totally incapacitated from the time when the worker became partially incapacitated until 1 of the following happens:
  - (a) the worker becomes totally incapacitated;
  - (b) the employer provides the worker with appropriate alternative employment;
  - (c) the worker finds appropriate alternative employment.

**U 8 Injury while travelling to or from employment etc**

- (1) Where personal injury is caused to a worker while travelling to or from—
  - (a) the worker's employment; or
  - (b) any place which it is necessary for the worker to attend to obtain a medical certificate, or to receive medical treatment or compensation, in relation to a previous injury in respect of which compensation is payable;

the worker's employer is liable to pay compensation as if the firstmentioned injury were an injury arising out of or in the course of that employment.

- (2) In this section:

*travelling* means travelling, whether within or outside the Territory, by the shortest convenient route for the journey, but does not include travelling during or after any substantial interruption of the journey or any substantial deviation from the route made for a reason unconnected with the worker's employment or obtaining the certificate, treatment or compensation, as the case may be, unless, in the circumstances of any particular case, the nature, extent, degree and content of the risk of injury was not materially changed or increased by reason only of any such interruption or deviation.

### **80A Actuarial review and back, neck and pelvis impairments**

- (1) This section applies to the following items in schedule 1 (the *disallowable items*):
- (a) item 46—permanent impairment of back;
  - (b) item 47—permanent impairment of neck;
  - (c) item 48—permanent impairment of pelvis.
- (2) As soon as practicable after the *Workers Compensation Amendment Act 2001* is notified, the Minister must commission a report from an actuary who has expertise in workers compensation insurance about the actuarial effect of the amendments made by that Act to this Act and, in particular, the actuarial effect of the inclusion of the disallowable items in schedule 1.

*Note* This section also commences on the day the *Workers Compensation Amendment Act 2001* is notified. Schedule 1 commences later, on 1 July 2002. See that Act, s 2.

- (3) A copy of the report must be presented to the Legislative Assembly on or before the first sitting day after 1 February 2002.

- (4) Notice of motion to disallow any of the disallowable items (a *notified item*) may be given to the Legislative Assembly within 6 sitting days after the report is presented to the Assembly.
- (5) If the Legislative Assembly passes a resolution to disallow a notified item, schedule 1 is taken to be amended by omitting the item.
- (6) For this section, the Legislative Assembly is taken to have passed a resolution to disallow a notified item if, at the end of 6 sitting days after notice is given—
  - (a) the notice has not been withdrawn and the motion has not been called on; or
  - (b) the motion has been called on and moved, but has not been withdrawn or otherwise disposed of.
- (7) If the Legislative Assembly passes a resolution to disallow a notified item, the Minister must prepare a written notice stating that, because of a resolution passed by the Legislative Assembly, schedule 1 is taken to be amended by omitting the item.
- (8) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (9) The Minister must ensure that the notice is notified within 7 days after the Legislative Assembly passes the resolution.
- (10) This section expires on 1 July 2002.

## **U 9 Compensation for death or incapacity through disease**

- (1) Where—
  - (a) a worker contracts a disease or suffers an aggravation, acceleration or recurrence of a disease; and
  - (b) any employment of the worker by his or her employer was a contributing factor to the contraction of the disease or the aggravation, acceleration or recurrence, as the case may be,

whether or not the disease was contracted or the aggravation, acceleration or recurrence was suffered in the course of that employment;

subsections (2) to (5) have effect.

(2) If—

- (a) the death of the worker; or
- (b) the total or partial incapacity for work of the worker,

results from the disease, or the worker obtained medical treatment in relation to the disease, then, for this Act, unless the contrary intention appears—

- (c) the contraction of the disease, or the aggravation, acceleration or recurrence, as the case may be, shall be deemed to be a personal injury to the worker arising out of the employment of the worker by his or her employer; and
  - (d) the date of the death, the date of the commencement of the incapacity or the date on which the medical treatment was first obtained, whichever is the earlier, shall be deemed to be the date of the injury.
- (3) Where a liability of an employer in respect of a disease of a worker arises by virtue of this section, any other employer who, prior to that liability so arising, employed the worker in any employment that caused or contributed to the disease shall, subject to subsection (4), be liable to pay to the employer from whom compensation is recoverable such contribution as is, in default of agreement, settled by arbitration.
- (4) An employer shall not be liable under subsection (2) or (3) in respect of a disease if the worker, at the time of entering the employment of that employer, made a wilful and false representation that the worker did not suffer, or had not previously suffered, from that disease.



- (5) A claimant for compensation under this section in respect of a worker's disease shall, if so required, furnish the employer who is liable to pay compensation to the claimant with such information as to the names and addresses of the worker's other employers as the claimant possesses.

**U 9AA Hearing loss—application of s 9**

Section 9 applies in relation to a loss, or a further loss, of hearing as if—

- (a) without limiting the generality of the definition of *disease* in section 6 (1), a loss, or a further loss, of hearing were a disease for that section; and
- (b) section 9 (2) (c) were amended by inserting 'who last employed the worker in employment of the kind referred to in section 9 (1) (b)' after 'employer'; and
- (c) section 9 (3) were amended by omitting 'prior to that liability so arising,' and substituting 'during the relevant period,'; and
- (d) the following subsection were added at the end:

'(6) In subsection (3):

*the relevant period*, in relation to the contraction of a disease, or the aggravation, acceleration or recurrence, as the case may be, that is deemed to be a personal injury under section 9 (2) (c) (the *relevant injury*), means—

- (a) where, at the date of the relevant injury, the worker was employed by the employer referred to in section 9 (2) (c)—
  - (i) if the worker had not recovered compensation in respect of a prior injury (being a loss, or a further loss, of hearing) that occurred within the period of 5 years immediately preceding the date of the relevant injury—that period; or

- (ii) if the worker had recovered compensation in respect of a prior injury (being a loss, or a further loss, of hearing) that occurred within the period of 5 years immediately preceding the date of the relevant injury—the period commencing on the day after the date on which the employer from whom that compensation was recovered or last recovered became liable to pay that compensation and ending on the date of the relevant injury; or
- (b) where, at the date of the relevant injury, the worker was not employed by the employer referred to in section 9 (2) (c) (the *recent employer*)—
- (i) if the worker had not recovered compensation in respect of a prior injury (being a loss, or a further loss, of hearing) that occurred within the period of 5 years immediately preceding the last day on which the worker was employed by the recent employer—that period; or
  - (ii) if the worker had recovered compensation in respect of a prior injury (being a loss, or a further loss, of hearing) that occurred within the period of 5 years immediately preceding the last day on which the worker was employed by the recent employer—the period commencing on the day after the date on which the employer from whom that compensation was recovered or last recovered became liable to pay that compensation and ending on the last day on which the worker was employed by the recent employer.’.

**U 9A Employment-related diseases**

Without limiting by implication the operation of section 9, where—

- (a) a worker has suffered, or is suffering from a disease, or the death of a worker results from a disease; and

- (b) the disease is a disease of a kind specified in the regulations as a disease that is related to employment of a kind so specified; and
- (c) the worker was, at any time before symptoms of the disease first became apparent, engaged in employment of that kind;

then, for this Act, unless the contrary is established, the employment in which the worker was so engaged shall be deemed to have been a contributing factor to the disease.

**U 9B Compensation for disease**

- (1) Any employment in which a worker who has contracted a disease was engaged at any time before symptoms of the disease first became apparent shall, unless the contrary is established, be taken for this Act to have been a contributing factor to the worker's contracting the disease if the incidence of the disease among persons who have engaged in that kind of employment is significantly greater than the incidence of the disease among persons who have engaged in employment generally in the place where the worker was ordinarily employed.
- (2) Any employment in which a worker who has suffered an aggravation, acceleration or recurrence of a disease was engaged at any time before symptoms of the aggravation, acceleration or recurrence first became apparent shall, unless the contrary is established be taken for this Act to have been a contributing factor to the aggravation, acceleration or recurrence if the incidence of the aggravation, acceleration or recurrence of the disease among persons suffering from the disease who have engaged in that kind of employment is significantly greater than the incidence of the aggravation, acceleration or recurrence of the disease among persons suffering from the disease who have engaged in employment generally in the place where the worker was ordinarily employed.

- (3) The death of a worker shall be taken for this Act to have been contributed to by a disease if, but for that disease, the death of the worker would have occurred at a significantly later time.
- (4) An incapacity for work or facial disfigurement of a worker shall be taken for this Act to have been contributed to by a disease if, but for the disease—
  - (a) the incapacity or disfigurement would not have occurred; or
  - (b) the incapacity would have commenced, or the disfigurement would have occurred, at a significantly later time; or
  - (c) the extent of the incapacity or disfigurement would have been significantly less.
- (5) This section shall not be construed as limiting the operation of section 9.

**U 10 Compensation for loss of body parts, hearing and sight**

- (1) Subject to this Act, where an injury in schedule 2, part 1, being an injury arising out of or in the course of a worker's employment by his or her employer, is caused to a worker, the compensation payable shall, where the injury results in an incapacity other than total and permanent incapacity for work, be \$20 000.
- (1A) Subject to this Act, where an injury specified in the first column of schedule 2, part 2, being an injury arising out of or in the course of a worker's employment by his or her employer, is caused to the worker, the compensation payable shall, where the injury results in incapacity other than total or permanent incapacity for work, be the amount equal to such percentage of the amount specified in subsection (1) as is specified in the second column of that part opposite the specification of the injury in the first column.
- (3) Where a worker habitually uses the left hand and arm to perform work usually performed by a worker with the right hand and arm,

the compensation payable to the firstmentioned worker under this section shall be—

- (a) for the loss of the left arm or any part thereof—the amount which would have been payable to a worker for a similar loss in respect of the right arm or the corresponding part thereof; and
  - (b) for the loss of the right arm or any part thereof—the amount which would have been payable to a worker for a similar loss in respect of the left arm or the corresponding part thereof.
- (4) Where a worker sustains an injury which causes the loss of the sight of both eyes or of an only useful eye, any compensation previously paid under this section or under any corresponding provision of any other law in respect of loss of sight shall be deducted from the compensation payable under this section.
- (5) Where a worker sustains an injury which causes partial and permanent loss of the sight of 1 eye, there shall be payable an amount of compensation equivalent to such percentage of the amount of compensation payable under this section in respect of the loss of the sight of 1 eye as is equal to the percentage loss of sight from that eye.
- (6) Where a worker sustains an injury which causes partial and permanent loss of the efficient use of a part of the body specified in schedule 2, there shall be payable an amount of compensation equivalent to such percentage of the amount of compensation payable under this section in respect of the loss of that part as is equal to the percentage loss of the efficient use of that part.
- (7) For subsection (5) or (6), the relevant loss is to be calculated when—
- (a) the worker's employer became liable to pay compensation; or

- (b) it is unlikely that there will be any improvement or further improvement in the sight from the relevant eye or the efficient use of the relevant part of the body;

whichever occurs last.

- (8) Where a payment referred to in subsection (5) or (6) has been made in relation to an injury, nothing in the relevant subsection prevents a further such payment being made in relation to the same injury where there is an increase—
  - (a) in the loss of sight from the relevant eye; or
  - (b) in the loss of the efficient use of the relevant part of the body.
- (9) For this section and schedule 2, the loss of a specified part of the body includes the permanent loss of the use of that part.

**U 10A Compensation for facial disfigurement**

- (1) Where a worker sustains an injury—
  - (a) that is not, or is not wholly, an injury specified in schedule 2; and
  - (b) that results in severe and permanent facial disfigurement;

the worker is entitled to receive from his or her employer by way of compensation for that injury, such amount, not exceeding 50% of the amount payable under section 10 (1), as may be agreed upon or, in default of agreement, as may be settled by arbitration in accordance with schedule 4 as being appropriate compensation having regard to the severity of the disfigurement.
- (7) For this section—
  - (a) facial disfigurement shall not be taken to be severe where, if the worker underwent suitable medical treatment, the disfigurement would not be severe; and

- (b) facial disfigurement shall not be taken to be permanent where, if the worker underwent suitable medical treatment, the disfigurement would be removed.

**U 10B Compensation for loss of sense of smell or sense of taste**

- (1) Where a worker sustains an injury that results in total or partial loss of the sense of smell or of the sense of taste, the worker is entitled to receive from his or her employer, by way of compensation for that injury, such amount not exceeding 10% of the amount payable under section 10 (1) as may be agreed upon or, in default of agreement, as may be settled by arbitration in accordance with schedule 4 as being appropriate compensation, having regard to the degree of loss of the sense.
- (7) In this section:  
*loss* means a permanent loss.

**U 10C Compensation for injuries relating to sexual organs and breasts**

- (1) Subject to section 10E, where a worker sustains an injury that results in—
- (a) the total or partial loss of genitals; or
- (b) in the case of a woman—the total or partial loss of 1 or both breasts;

the worker is entitled to receive from his or her employer, by way of compensation for that injury, such amount not exceeding 50% of the amount payable under section 10 (1) as may be agreed on or, in default of agreement, as may be settled by arbitration in accordance with schedule 4 as being appropriate compensation having regard to the severity of the injury and the degree of the loss.

**U 10D Compensation for loss of capacity to engage in sexual intercourse**

Subject to section 10E, where a worker sustains an injury that results in the permanent and total loss of his or her capacity to engage in sexual intercourse the worker shall be entitled to receive from his or her employer, by way of compensation for that injury, 50% of the amount payable under section 10 (1).

**U 10E Persons not entitled to compensation under s 10C and s 10D**

A person is not entitled to receive compensation under section 10C and section 10D in respect of the same injury.

**U 10F Limitations on entitlement**

The provisions of sections 10A, 10B, 10C and 10D do not apply in relation to an injury where that injury, or another injury sustained at the same time, results in the death of the worker within 3 months after the date of that injury or those injuries.

**10G Compensation for sporting injuries**

A person is not entitled to receive compensation for an injury sustained as a result of his or her engagement in professional sporting activity.

**U 11 Compensation for medical treatment**

(1) Where—

- (a) compensation in respect of an injury is payable by an employer to, or in respect of, a worker; or
- (b) but for the fact that a worker is not incapacitated for work, or but for the operation of schedule 1, clause 2 (b) (ii) compensation would be so payable;

the following provisions have effect.



- (2) The employer is liable to pay—
- (a) in respect of the cost of medical treatment reasonably obtained in relation to the injury—compensation of such amount as is appropriate for the provision of the medical treatment, having regard to the charges customarily made for similar medical treatment in the place where that treatment is obtained; and
  - (b) in respect of any damage to, or loss of, the worker's clothing sustained in association with the injury—compensation of such an amount as is reasonable for the repair or replacement of the damaged or lost clothing.
- (3) The aggregate of any amounts payable under subsection (2)—
- (a) for medical treatment consisting of the repair or replacement of a worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid; or
  - (b) for damage to or loss of a worker's clothing;
- shall not exceed—
- (c) \$300 or such greater amount as is prescribed; or
  - (d) if an amount in respect of such treatment, damage or loss is settled by arbitration in accordance with schedule 4—that amount.
- (3A) For this section, the cost of medical treatment shall be taken to include—
- (a) the amount of wages lost by the worker by reason of the worker's attendance at any place for the purpose of undergoing such treatment; and
  - (b) the cost of conveyance of the worker (whether by himself or herself or by another person) to and from such a place as ascertained in accordance with the regulations; and

- (c) the cost of any accommodation (including the cost of meals) required by the worker by reason of the worker's attendance at such a place as ascertained in accordance with the regulations.
- (3B) Where the regulations prescribe a method for determining a cost under subsection (3A) (b) or (c), the regulations may also prescribe that any figure used to determine the cost be adjusted in accordance with the index number as issued from time to time.
- (4) Subject to subsection (5), a worker shall not institute proceedings for the recovery of compensation for the cost of medical treatment or in respect of damage to or loss of the worker's clothing unless the worker has given the employer notice in writing specifying—
- (a) the amount of compensation sought; and
  - (b) reasonable particulars of the expenses for which compensation is sought.
- (5) The want of notice or any defect or inaccuracy in the notice shall not be a bar to the maintenance of the proceedings if it is found in the proceedings that the employer's defence is not, or would not be, if a notice or an amended notice were then given and the hearing postponed, prejudiced by the want, defect or inaccuracy, or that the want, defect or inaccuracy was occasioned by mistake or other reasonable cause.
- (6) Where a worker receives medical treatment the cost of which the worker claims from an employer under this section, the employer may, in consultation with the medical practitioner or other person providing the treatment, before making a payment under this section, require the worker to be examined by a medical practitioner, or other person, selected by the employer.
- (7) Where an employer is liable under this section to pay any sum of money in respect of medical treatment received by a worker from a hospital, the employer shall pay the amount of that sum less any amount previously so paid by the worker in respect of that treatment on demand—

- (a) in the case of a private hospital—to the proprietor of that hospital; and
- (b) in the case of any other hospital—to the person authorised in writing by the governing body or person in charge of the hospital to receive payments of money due to the hospital.

### **U 12A CPI indexation**

- (1) Where—
  - (a) there is a variation in the index number; and
  - (b) a variation in accordance with this section would increase the amount of compensation payable under section 10 (1) or schedule 1;

an amount of compensation payable under section 10 (1) or schedule 1 shall be varied in accordance with this section.

- (2) An amount referred to in subsection (1) shall be varied in accordance with the formula

$$\frac{L \times N \times F}{51.6}$$

where:

*L* means the base figure.

*N* means the most recently issued index number.

*F* means a factor advised by the Commonwealth Statistician to make the most recently issued index number comparable to an index number with a reference base of 1989-1990=100.

### **U 12B Application of variation**

- (1) A variation in an amount of compensation made in accordance with section 12A applies to a lump sum payable in respect of an injury disease, loss or death occurring in the period of 3 months

immediately succeeding the period to which the index number used in calculating the variation refers.

- (2) A variation referred to in subsection (1) applies to a weekly payment which a worker is entitled to receive during the period of 3 months immediately succeeding the period to which the index number used in calculating the variation refers.

### **U** 13 **Contracting out**

A provision in an agreement or other document whereby—

- (a) a right conferred on a worker by this Act is excluded or limited in any way; or
- (b) the liability imposed on an employer by this Act is excluded or limited in any way,

is void.

### **U** 14 **Subcontracting**

- (1) Where any person (the *principal*), in the course of or for the purpose of the principal's trade or business, contracts with any other person (the *contractor*) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation which the principal would have been liable to pay if that worker had been immediately employed by the principal.
- (2) Where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Act, references to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he or she is immediately employed.

- (3) Where the principal is liable to pay compensation under this section, the principal shall be entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section.
- (4) This section does not prevent a worker recovering compensation from the contractor instead of the principal.

**U 15 Medical referees**

- (1) The Minister may appoint any medical practitioners to be medical referees for this Act.
- (2) Where the services of a medical referee have been used as a medical practitioner in connection with any case by or on behalf of an employer or worker or by any insurer interested, he or she shall not act as medical referee in that case.
- (3) A person appointed to be a medical referee shall be paid such fees in respect of the performance of his or her functions as a medical referee as the Minister determines.

## **U** Part 2A Occupational rehabilitation

### **U** 15A Definitions for pt 2A

In this part:

*occupational rehabilitation*, in relation to an injured worker, means—

- (a) the assessment of the needs of the worker for paragraph (b); and
- (b) the provision of appropriate, adequate and timely services for the worker aimed at maintaining the worker in suitable employment or returning him or her to suitable employment.

*protocol* means a protocol approved under section 15F.

### **U** 15B Appropriate, adequate and timely

For section 15A, definition of *occupational rehabilitation*, paragraph (b), services shall be taken to be appropriate, adequate and timely if they are in accordance with any relevant protocol.

### **15C Occupational rehabilitation**

- (1) Where a worker claims compensation for an injury, the employer shall provide the worker with occupational rehabilitation at the employer's expense unless the employer is of the opinion, based on reasonable grounds, that the worker is not entitled to compensation.

Maximum penalty: 50 penalty units.

- (2) The provision of occupational rehabilitation to a worker shall not be taken to be an admission of liability in relation to the worker's claim for compensation.

**U 15D Occupational rehabilitation policy**

- (1) An employer shall, in accordance with subsection (4) and any relevant protocol—
  - (a) develop an occupational rehabilitation policy for his or her employees; and
  - (b) from time to time, review that policy.
- (2) An employer shall comply with subsection (1) (a) as soon as practicable and, in any event, within 3 months after the commencement of this section.

Maximum penalty: 10 penalty units.

- (3) As soon as practicable after developing or reviewing an occupational rehabilitation policy an employer shall display a copy of the policy in a conspicuous place so that it may be conveniently read by each worker employed by the employer.

Maximum penalty: 10 penalty units.

- (b) if the offender is a body corporate—50 penalty units.
- (4) For the purpose of developing or reviewing an occupational rehabilitation policy under subsection (1), the employer shall consult—
  - (a) any health and safety committee established in respect of the employer's employees; or
  - (b) if no such committee exists in respect of the employer's employees—those employees or any relevant union.

- (5) In subsection (4):

***health and safety committee*** means a health and safety committee established under regulations under the *Occupational Health and Safety Act 1989*.

*relevant union*, in relation to an employee of an employer, means a registered union of which the employee is a member, being an employee who is qualified to be such a member by virtue of the work that the employee performs as an employee of the employer.

**U 15E Rehabilitation coordinator**

- (1) An employer shall—
  - (a) appoint a person to be a rehabilitation coordinator for his or her employees; and
  - (b) ensure, as far as practicable, that there is always an appointed rehabilitation coordinator for his or her employees.
- (2) An employer shall display a notice containing the name of any person appointed as rehabilitation coordinator and stating that he or she is the rehabilitation coordinator in a conspicuous place so that it may be conveniently read by each worker employed by the employer.

Maximum penalty: 10 penalty units.

**U 15F Approval of protocol**

- (1) After consulting with the council, the Minister may, in writing, approve a protocol relating to occupational rehabilitation.

*Note* Power given under an Act to make a statutory instrument (including the approval of a protocol) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) A protocol approved under subsection (1) is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

*Note 2* An amendment or repeal of a protocol is also a disallowable instrument (see *Legislation Act 2001*, s 46 (2)).

- (3) A protocol may make provision in respect of the following matters:



- (a) the requirements for an occupational rehabilitation policy;
  - (b) when occupational rehabilitation is appropriate, adequate and timely;
  - (c) the settlement of disputes;
  - (d) the fulfilment of parties' responsibilities under this part;
  - (e) any other matter that is necessary or convenient to be so dealt with for the carrying out of or giving effect to this part.
- (4) In this section:

*council* means the Occupational Health and Safety Council established under the *Occupational Health and Safety Act 1989*, section 9.

#### **U 15H Publication**

- (1) The Minister shall cause to be published in a newspaper published and circulating in the Territory, as soon as practicable after approving a protocol under section 15F, notice of that approval—
- (a) specifying a place or places at which copies of the protocol to which the approval relates may be purchased; and
  - (b) specifying a place or places at which a copy of the protocol may, at any reasonable time, be inspected.
- (2) The Minister shall ensure that—
- (a) copies of the protocol to which an approval under section 15F relates are made available for purchase at each place specified for that purpose in the relevant notice under subsection (1); and
  - (b) a copy of that protocol is, at any reasonable time, available for inspection at each place specified for that purpose in the relevant notice under subsection (1).

## **U** Part 3 Insurance

### **U** 16 Prescribed insurance policies

- (1) For this part, a *prescribed insurance policy* is an insurance policy in the form—
  - (a) set out in schedule 3; or
  - (b) approved by the Minister under subsection (2);for an unlimited amount in respect of any liability of an employer arising under this Act, or independently of this Act, in respect of any injury to, or the death of, each worker of this Territory employed by the employer.
- (2) The Minister may, in writing, approve a form of insurance policy for the purposes of subsection (1) (b)—
  - (a) in relation to a worker required to travel in the course of employment; or
  - (b) in relation to a worker engaged in domestic duties; or
  - (c) in relation to any other worker of a type determined in writing by the Minister.
- (3) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (4) A prescribed insurance policy may include a provision relating to a liability of the employer other than a liability referred to in subsection (1).
- (5) A reference in a prescribed insurance policy to wages, salaries and other forms of remuneration shall be taken to include a reference to—

- (a) salary, overtime, shift and other allowances, over-award payments, bonuses, commissions, payments to working directors, payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker and any other consideration in money or money's worth given to the worker under a contract of service or apprenticeship; and
  - (b) payment (whether by way of commission, fee, reward or otherwise) under a contract (whether referred to as a contract, agreement, arrangement or engagement) to a person deemed to be a worker in accordance with section 6 (2), (3), (3A), (3C), (4), (4AA), (4B), (4C) or (4D);
- but not to include a reference to—
- (c) any sum that the employer has been accustomed to pay to the worker to cover any special expenses incurred by the worker because of the nature of the employment; or
  - (d) any allowance to reimburse costs arising out of an obligation incurred under a contract; or
  - (e) any amount expended on behalf of the worker; or
  - (f) directors fees; or
  - (g) compensation under this Act; or
  - (h) any payment for long service leave, a lump sum payment instead of long service leave or any payment under the *Long Service Leave (Building and Construction Industry) Act 1981* or the *Long Service Leave (Contract Cleaning Industry) Act 1999*.
- (6) Nothing in this section shall be taken as preventing a cover note from being a prescribed insurance policy.

**U 17 Approved insurers**

- (1) On application by an insurer, the Minister shall, by notice in writing to the insurer—
  - (a) approve the insurer for this Act; or
  - (b) refuse to do so.

*Note* A fee may be determined under s 28 (Determination of fees) for this section.
- (2) The Minister may, by notice in writing to an approved insurer, revoke the approval from a specified date at least 28 days after the date of the notice.

**U 17A Effect of revocation of approval**

- (1) Where the approval of an insurer under section 17 (1) is revoked, section 17B (1) and (2) apply in relation to an insurance policy issued by that insurer at a time when the insurer was so approved as if the insurer was still so approved.
- (2) The revocation of an approval of an insurer under section 17 does not—
  - (a) annul a policy issued by the insurer before that revocation; or
  - (b) affect the liability of the insurer under such a policy; or
  - (c) affect the liability of the insurer under section 18H.

**U 17B Compulsory insurance—employers**

- (1) An employer shall at all times maintain a prescribed insurance policy in force with an approved insurer.

Maximum penalty:

  - (a) for a 1st offence—50 penalty units; or
  - (b) for a 2nd or subsequent offence—

- (i) if the person charged is an individual—250 penalty units, imprisonment for 2 years or both; or
  - (ii) if the person charged is a corporation—1 000 penalty units.
- (1A) A cover note shall be taken to be a prescribed insurance policy only if it is in force for a period of no more than 30 days and—
  - (a) the employer maintained a prescribed insurance policy (other than a cover note) immediately before maintaining the cover note; or
  - (b) the person by whom the cover note is maintained was not an employer immediately before commencing to maintain the cover note.
- (2) Where—
  - (a) an employer complies with subsection (1); and
  - (b) while the relevant policy is in force, a court order is made for the winding-up of the insurer under a law of the Territory, a State or another Territory;the employer shall—
  - (c) within 30 days after the date of the order, obtain a prescribed insurance policy from another approved insurer; and
  - (d) maintain that policy in force.Maximum penalty:
  - (a) for a 1st offence—50 penalty units; or
  - (b) for a 2nd or subsequent offence—
    - (i) if the person charged is an individual—250 penalty units, imprisonment for 2 years or both; or
    - (ii) if the person charged is a corporation—1 000 penalty units.

- (2A) For subsections (1) and (2), a director or officer of a body corporate shall be deemed to have committed the offence committed by the body corporate and shall, upon conviction, be subject to the same penalty as is applicable if the offence were committed by a natural person.
- (2B) Notwithstanding subsection (2A) an officer or director of a company shall not be convicted of an offence if he or she actively endeavoured to ensure that the relevant body corporate complied with the provisions of this section.
- (3) Where 2 or more employers could become liable to pay compensation in respect of the same worker, any of those employers may comply with subsection (1) or (2) in relation to that worker by means of a joint insurance policy in respect of their joint liability.
- (4) In the prosecution of an employer for the contravention of subsection (1) or (2), an averment in the information that there was not in force, on a specified date, a prescribed insurance policy issued by an approved insurer in favour of that employer is evidence of the matter averred.
- (5) Where an employer contravenes subsection (1) or (2) (c) or (d), the nominal insurer may recover as a debt from the employer an amount equal to treble the amount of the premiums which would have been payable to an approved insurer if the employer had complied with the relevant provision.
- (6) Where—
- (a) an employer contravenes subsection (1) or (2) (c) or (d); and
  - (b) the employer maintains an insurance policy in respect of any liability arising under this Act;
- that contravention does not—
- (c) annul that policy; or
  - (d) affect the liability of the insurer under such a policy; or

- (e) affect the liability of the insurer under section 18H.
- (7) This section does not apply in relation to an exempt employer.

### **U 17C Exempt employers**

- (1) On application in writing by an employer, the Minister shall, by notice in writing to the employer—
  - (a) exempt the employer from compliance with section 17B (1) and (2) for a specified period; or
  - (b) refuse to do so.

*Note* A fee may be determined under s 28 (Determination of fees) for this section.

- (2) The Minister shall grant an exemption under subsection (1) to an employer if he or she is satisfied, on reasonable grounds, that the employer is able to meet, from the employer's own resources, any liability under this Act.
- (3) The Minister may, by notice in writing to an employer who has been granted an exemption under subsection (1), require the employer, within 28 days after the date of the notice, to show cause why the exemption should not be—
  - (a) suspended for a period specified in the notice; or
  - (b) revoked.
- (4) After the expiration of 28 days after the date of a notice under subsection (3), in consideration of any representation made by the relevant employer, the Minister shall, by notice in writing to the employer—
  - (a) suspend the relevant exemption for the period specified in the notice; or
  - (b) revoke the exemption;

(as the case requires) from the date specified in the notice, if the Minister is satisfied, on reasonable grounds, that subsection (2) no longer applies in relation to the employer.

- (5) The date of effect of the suspension or revocation of an exemption specified in a notice under subsection (4) is to be at least 14 days after the date of the notice.

**U 17D Compulsory insurance—insurers**

- (1) An approved insurer shall not refuse to issue a prescribed insurance policy required by an employer for section 17B (1) or (2) unless the Minister consents in writing.

Maximum penalty: 100 penalty units.

- (2) An approved insurer shall not issue an insurance policy required by an employer for section 17B (1) or (2) which is not a prescribed insurance policy.

Maximum penalty: 100 penalty units.

**U 17E Cover notes**

- (1) An insurer shall not issue a cover note for a period for which an employer is without a prescribed insurance policy unless that period is 30 days or less.

Maximum penalty: 10 penalty units.

- (2) In subsection (1), the reference to a prescribed insurance policy shall be taken to be a reference to a prescribed insurance policy that is not a cover note.

- (3) An insurer may recover a premium from an employer for a period for which a cover note from the insurer was in force in relation to the employer if, at the expiration of the cover note, the employer does not obtain a policy of insurance from the insurer.



**U 18 Provision of information to insurers**

- (1) An employer applying to an insurer for the issue renewal of a prescribed insurance policy shall give the insurer, in relation to the period relevant to the determination of the premium payable for the issue renewal of the policy—
- (a) a certificate from a registered auditor stating the total amount of wages paid to the workers of this Territory employed by the employer; and
  - (b) a statutory declaration setting out—
    - (i) the determined categories of workers of this Territory employed by the employer; and
    - (ii) the total amount of wages paid in respect of each of those categories.

Maximum penalty:

- (a) for a 1st offence—50 penalty units; or
  - (b) for a 2nd or subsequent offence—
    - (i) if the person charged is an individual—250 penalty units, imprisonment for 2 years or both; or
    - (ii) if the person charged is a corporation—1 000 penalty units.
- (2) Where an employer is a party to an insurance policy in the form set out in schedule 3, the employer shall give the insurer—
- (a) a certificate from a registered auditor; and
  - (b) a statutory declaration;

of the type, and in the circumstances, provided for under the term of the policy corresponding to paragraph 11 or 13, as the case requires, of the conditions in that form.

Maximum penalty: 50 penalty units.

- (3) A registered auditor who knowingly supplies false, misleading or incomplete information in a certificate provided for subsection (1) or (2) commits an offence.

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

- (4) A person who knowingly provides false information in a statutory declaration referred to in subsection (1) or (2) commits an offence:

Maximum penalty:

- (a) for a 1st offence—
- (i) if the person charged is an individual—250 penalty units, imprisonment for 2 years or both; or
  - (ii) if the person charged is a corporation—1 000 penalty units; or
- (b) for a 2nd or subsequent offence—
- (i) if the person charged is an individual—1 000 penalty units, imprisonment for 10 years or both; or
  - (ii) if the person charged is a corporation—10 000 penalty units.

- (5) A person who has been convicted under section 17B or 18 of a second or subsequent offence shall not be able to employ a worker of this Territory, or be the director or officer of any corporation employing a worker of this Territory, for a period of 5 years from the date of conviction.

Maximum penalty: imprisonment for 5 years.

- (6) A person who aids, abets, counsels or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in knowingly providing false information in a statutory declaration referred to in subsection (1) or (2) shall be deemed to have

committed the offence in subsection (4) and shall be punishable on conviction, accordingly.

**U 18A Provision of information to Minister**

- (1) The Minister may, by notice in writing, require—
- (a) an approved insurer; or
  - (b) an exempt employer; or
  - (c) where an approved insurer or employer is a body corporate—a specified officer of the body corporate, on behalf of that body;
- to give to the Minister, within such time as is specified in the notice—
- (d) particulars of the number of injuries in respect of which compensation has been paid during a period specified in the notice and the total amount of compensation paid during that period; and
  - (e) such other particulars relating to the operation of this Act as are specified in the notice.
- (1A) A notice under subsection (1) shall set out the requirements of subsection (2) in relation to the notice, and the penalty for contravention of subsection (2).
- (1B) A person is not excused from giving particulars in accordance with a requirement under subsection (1) on the ground that giving those particulars would incriminate, or would tend to incriminate, the person or the person's spouse or would tend to expose that person to proceedings for an offence against a law in force in Australia or elsewhere.
- (1C) Where a person is required to furnish particulars under subsection (1), the particulars given, or any information, document or thing obtained as a direct or indirect consequence of giving those particulars, shall not be admissible in evidence against the person in

any civil or criminal proceedings in any court other than proceedings for perjury or for an offence against subsection (2).

- (2) A person must not—
- (a) fail to comply with a notice given to the person under subsection (1); or
  - (b) give details in response to a notice given to the person under subsection (1) that are false or misleading in a material particular.

Maximum penalty (subsection (2)): 50 penalty units.

### **18B Nominal insurer**

- (1) The Minister may, in writing, appoint a person to be the nominal insurer for this Act.
- (2) The appointment shall be made on the nomination of the approved insurers or a majority of them or, in default of such a nomination, directly by the Minister.
- (3) An appointment is a notifiable instrument.

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

### **18C Claims for payment by nominal insurer**

- (1) Where—
  - (a) a claim has been made against an employer that the employer is liable to pay compensation in respect of an injury caused to, or sustained by, a worker, being an injury arising out of or in the course of the worker's employment by the employer or for which the employer is liable as if the injury arose out of or in the course of the worker's employment; and
  - (b) in relation to the claim, the employer has agreed to pay any compensation or the liability of the employer to pay any compensation has been established; and

- (c) the liability of the employer to pay the compensation is not covered in full by a policy or policies of insurance obtained in accordance with this Act; and
- (d) the employer defaults in payment of any amount of the compensation for a period exceeding 1 month;

the person entitled to the compensation may make a claim against the nominal insurer for payment of the amounts of compensation payable and to become payable.

(2) Where—

- (a) a final judgment has been obtained against an employer in respect of the employer's liability independently of this Act for an injury to, or the death of, a worker of this Territory employed by the employer, being an injury or death that occurred on or after 1 September 1969; and
- (b) execution of the judgment is not stayed; and
- (c) the liability of the employer under the judgment is not covered, or is not covered in full, by a policy or policies of insurance obtained in accordance with this Act; and
- (d) the judgment has, for a period of not less than 1 month, remained unsatisfied in whole or in part;

the person in whose favour the judgment was given may make a claim against the nominal insurer for payment of the amount by which the judgment remains unsatisfied.

(3) Where—

- (a) an employer has entered into an agreement to pay a sum of money in discharge of the employer's liability independently of this Act in respect of an injury to, or the death of, a worker of this Territory employed by the employer, being an injury or death that occurred on or after 1 September 1969; and

- (b) the liability of the employer is not covered, or is not covered in full, by a policy or policies of insurance obtained in accordance with this Act; and
- (c) the employer has, for a period of not less than 1 month, failed to pay the whole or a part of the sum of money payable by the employer under the agreement;

the person to whom that sum of money is payable under the agreement may make a claim against the nominal insurer for payment of the amount that the employer has failed to pay.

- (4) A claim under this section shall be made within a period of 1 month after the right to make the claim arose or within such further time as the Minister, on an application made before or after the expiration of that period of 1 month, allows.

- (5) In subsection (1):

*compensation* includes—

- (a) an amount in settlement of a claim for compensation; and
- (c) costs payable to a worker by an employer in relation to a claim for compensation.

### **18D Payments by nominal insurer**

Subject to this Act, where a person makes a claim against the nominal insurer in accordance with section 18C, the nominal insurer shall pay to that person—

- (a) where the claim is made under section 18C (1)—the compensation payable at the date of the claim or becoming payable afterwards; or
- (b) where the claim is made under section 18C (2)—the amount payable for damages and costs under the judgment to which the claim relates; or

- (c) where the claim is made under section 18C (3)—the amount payable by the employer under the agreement.

**U 18E Reopening of agreements and awards**

- (1) This section applies if a claim is made against the nominal insurer under section 18C (1).
- (2) The nominal insurer may apply to the Magistrates Court for an order directing that the agreement or award under which the compensation is payable be reopened on the ground that there is reason to believe that the employer has not honestly endeavoured to protect the employer's own interests, and taken all reasonable steps to protect the employer's own interests, in relation to the agreement, the appointment of a committee or the arbitration.
- (3) On the application, the Magistrates Court may order that the agreement or award be reopened.

**18EAA Deciding or redeciding claim**

- (1) If the Magistrates Court makes an order under section 18E, the court must decide or redecide the claim for compensation by arbitration.
- (2) The nominal insurer must be a party to the arbitration.
- (3) In an award made by the Magistrates Court under this section, the court may set aside a previous agreement or award.
- (4) If an award of compensation is made against the employer by the Magistrates Court, the nominal insurer must pay to the person entitled the amounts payable under the award.
- (5) An agreement by a person to accept, in settlement of a claim against the nominal insurer, an amount less than the amount payable according to the relevant agreement or award has no effect unless approved by the Magistrates Court.

**U 18EA Power of Supreme Court to set aside certain agreements**

- (1) Where a claim is made against the nominal insurer under section 18C (3), the nominal insurer may apply to the Supreme Court for an order setting aside the agreement to which the claim relates.
- (2) Where, on an application under subsection (1), the Supreme Court is satisfied there are reasonable grounds for believing that, in relation to the agreement the subject of the application, the employer has not in good faith endeavoured to protect the employer's own interests and taken all reasonable steps to that end, the Supreme Court may, by order, set aside the agreement.
- (3) Where an agreement is set aside under this section—
  - (a) the agreement shall, for any proceedings in a court, be deemed never to have had effect; and
  - (b) evidence of a statement or communication, or a part of a statement or communication tending to establish the existence of the agreement shall not, unless the Supreme Court directs otherwise, be admissible in such proceedings.
- (4) The Supreme Court shall not give a direction for subsection (3) (b) unless it is satisfied that the admission of the evidence is necessary to avoid injustice to a party to the proceedings.
- (5) Where the Supreme Court sets an agreement aside under subsection (2), the costs of the respondent of, and incidental to, the application shall, unless the Supreme Court directs that this subsection shall not apply in relation to the application, be paid by the nominal insurer.
- (6) The Supreme Court shall not give a direction under subsection (5) in relation to an application under this section unless it is satisfied that, having regard to the special circumstances surrounding the making of the agreement to which the application relates, it is desirable that a direction under that subsection be given.
- (7) Where—



- (a) an agreement is set aside under subsection (2); and
- (b) but for this subsection, an action by a party to the agreement to recover damages in respect of a liability to which the agreement related would, at the time at which the agreement is set aside, be barred or would, within 3 months after the agreement is set aside, become barred, by a law (other than an Act) in force in the Territory relating to the limitation of the time within which proceedings in a court may be commenced;

such an action may, notwithstanding any such law, be commenced at any time within 3 months after the date on which the agreement was set aside.

(8) If—

- (a) an agreement is set aside under subsection (2); and
- (b) an action by a party to the agreement (the *plaintiff*) to recover damages in relation to a liability to which the agreement related is begun in a Territory court;

the plaintiff must, within 7 days after the day when the action was begun, give the nominal insurer written notice of the action.

Maximum penalty: 5 penalty units.

(9) Where notice is given to the nominal insurer under subsection (8), the nominal insurer—

- (a) may, on behalf of the employer sued in the action, conduct the defence of the action in the name of the employer and in such manner as the nominal insurer thinks fit; and
- (b) shall indemnify the employer against all costs and expenses of and incidental to the action.

(10) Nothing in this Act authorises the nominal insurer—

- (a) to consent to the entry of judgment in an action against a defendant in the action; or

- (b) to compromise the action;  
except with the consent of that defendant.

**U 18F Intervention by nominal insurer**

- (1) This section applies to an employer—
  - (a) against whom a claim for compensation has been made; and
  - (b) who is not an exempt employer; and
  - (c) who is not a party to a prescribed insurance policy which applies to that claim.
- (1A) An employer to whom this section applies shall, not later than 14 days after the claim is made, give the nominal insurer full written particulars of the claim.

Maximum penalty: 10 penalty units.

- (1B) An employer to whom this section applies shall not make any agreement or admission in relation to the claim, or in relation to arbitration in respect of the claim, except with the consent of the nominal insurer.

Maximum penalty: 20 penalty units.

- (b) if the offender is a body corporate—100 penalty units.
- (2) In relation to a claim referred to in subsection (1)—
  - (a) the nominal insurer is entitled to intervene in any arbitration proceedings as a party; and
  - (b) the nominal insurer has the same right of objection to arbitration by a committee as has the employer under schedule 4.

**U 18G Effects of payment by nominal insurer**

Where the nominal insurer pays an amount under this Act in respect of a liability of an employer—

- (a) the payment operates, to the extent of the payment, to discharge the liability of the employer; and
- (b) 3 times the amount of the payment is a debt payable by the employer to the nominal insurer, and may be sued for and recovered in a court of competent jurisdiction; and
- (c) the nominal insurer has the right of subrogation in respect of all rights that the employer may have against any person in relation to the occurrence that gave rise to the liability of the employer.

**U 18H Funds for payments by nominal insurer**

- (1) An amount payable to a person by the nominal insurer may be sued for and recovered by that person by action in a court of competent jurisdiction, but the nominal insurer is not liable to satisfy a judgment in such an action except out of moneys referred to in subsection (2).
- (2) The nominal insurer shall pay amounts payable under this Act out of moneys provided in accordance with this section by approved insurers and exempt employers and any other moneys received under this Act.
- (2A) For subsection (2), amounts payable under this Act include the following:
  - (a) the amount of any costs and expenses incurred;
  - (b) administrative costs of the nominal insurer.
- (3) Liability to provide an amount referred to in subsection (2) shall be apportioned by the nominal insurer amongst those who were approved insurers or exempt employers at the time of the occurrence

that gave rise to the right to compensation in respect of which the amount is payable.

- (4) In making an apportionment under subsection (3), the nominal insurer shall have regard so far as practicable to—
  - (a) the premium incomes received by each approved insurer in respect of prescribed insurance policies in the financial year last preceding the occurrence; and
  - (b) the premium that would have been payable by each exempt employer if the employer had obtained, in respect of that year (or the part of that year during which the employer was an exempt employer), a prescribed insurance policy.
- (5) When the nominal insurer makes an apportionment under this section, the nominal insurer shall notify, in writing, each approved insurer and exempt employer concerned of particulars of the apportionment and require the insurer or employer to pay to the nominal insurer the apportioned amount, within such time as is specified in the notice.
- (6) An amount specified in a notice to a person under subsection (5) and unpaid at the expiration of the time specified in the notice is a debt due and owing to the nominal insurer by the approved insurer or exempt employer and may be sued for and recovered by the nominal insurer in a court of competent jurisdiction.
- (7) Where an amount has been provided by approved insurers and exempt employers under this section in relation to a payment by the nominal insurer, the nominal insurer shall apply any amounts received in relation to the payment from the defaulting employer in reimbursing proportionately the approved insurers and exempt employers.

**18J Information and assistance by employer to nominal insurer**

- (1) For the exercise of his or her functions under this Act, the nominal insurer may, by notice in writing, require an employer—
  - (a) to give such information and assistance as the nominal insurer considers necessary; and
  - (b) to furnish such documents in the employer's possession as the nominal insurer considers necessary; and
  - (c) to execute such documents as it is necessary for the employer to execute to enable the nominal insurer to exercise the nominal defendant's functions; and
  - (d) to allow the nominal insurer at all reasonable times to inspect the plant, works, machinery and appliances used in the employer's business.
- (2) An employer must comply with a requirement of the nominal insurer under subsection (1).

Maximum penalty (subsection (2)): 50 penalty units.

**18K Proceedings to be in the name of 'The Nominal Insurer'**

For this Act—

- (a) any proceedings by or against the nominal insurer may be taken in the name of 'The Nominal Insurer'; and
- (b) the death or resignation of, or the revocation of the appointment of, the person holding office as the nominal insurer at the time any proceedings were commenced and the appointment of another person in his or her place does not abate the proceedings and the proceedings may be continued and concluded as if the person had not died or resigned or as if the appointment had not been revoked, as the case may be.

**U 20 Premiums—maximum rates**

An insurer shall not charge or accept in respect of a prescribed insurance policy a premium greater than that calculated in accordance with the prescribed maximum rate of premium.

Maximum penalty: 50 penalty units.

**U 20AA Premiums—remuneration for professional sporting activity**

An employer is not liable to pay any portion of a premium for a prescribed insurance policy calculated by reference to the remuneration payable to an employee for engaging in professional sporting activity.

**U 20A Variation of insurance policies**

- (1) A prescribed insurance policy that is in force immediately before the date of a variation under section 12A has effect in the period during which the policy remains in force after the variation as if it applied to that liability as so varied.
- (2) Where, by virtue of subsection (1)—
  - (a) a variation under section 12A increases the potential liability of an authorised insurer under a prescribed insurance policy; and
  - (b) the policy has effect in a period after the variation;

the employer who is a party to the policy shall pay the insurer an additional premium of the amount calculated in accordance with the formula—

$$P_1 - P_2$$

where:

$P_1$  means the amount of the premium for the period after the variation at the rate that would have been payable if the policy had been issued after the date of the variation.

$P_2$  means the amount of the premium for the period after the variation at the rate payable under the policy.

- (3) Where, by virtue of subsection (1)—
- (a) a variation under section 12A reduces the potential liability of an authorised insurer under a prescribed insurance policy; and
  - (b) the policy has effect in a period after the variation;

the insurer shall pay the employer who is a party to the policy a refund of the amount calculated in accordance with the formula—

$$P_2 - P_1$$

where:

$P_1$ —see subsection (2).

$P_2$ —see subsection (2).

## **U** 21 Workers rights to information

- (1) An employer shall, on request by a worker of this Territory who is or has been employed by the employer, in relation to a date specified by the worker—
- (a) inform the worker of the name and address of the insurer, or of each insurer, who issued to the employer an insurance policy for the purposes of this Act which was current on that date; or
  - (b) if, on that date, the employer was exempt from the requirement to obtain insurance under this Act—inform the worker of that fact.

Maximum penalty: 20 penalty units.

- (2) An employer shall keep displayed, in accordance with subsection (3), a notice containing a summary of the requirements of this Act for making compensation claims, in the form approved by the Minister under section 29 (Approved forms) for the notice, and stating—
- (a) that claim forms for compensation are available from the employer on request and free of charge; and
  - (b) if the employer is a party to a prescribed insurance policy—the name and address of the insurer; and
  - (c) if the employer is an exempt employer—that the employer is exempt from the requirement to obtain insurance under this Act.

Maximum penalty: 10 penalty units.

- (3) An employer shall display the notice in a conspicuous place so that it may be conveniently read by each worker of this Territory employed by the employer.
- (4) An employer shall ensure that claim forms approved by the Minister under section 29 (Approved forms) are available during business hours to each worker of this Territory who is or has been employed by the employer upon request and free of charge.

Maximum penalty: 10 penalty units.



## **U** Part 4 Compensation and common law remedies

### **U** 21A Definitions for pt 4

In this part:

*compensation* includes a payment under section 11.

*damages* includes an amount paid under a compromise or settlement of a claim for damages, whether legal proceedings had been instituted or not, but does not include an amount paid for costs incurred in connection with proceedings in a court.

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

### **21AB 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, as the case may be, is a reference to the person for whose benefit the compensation is paid or payable.

### **U** 21B Payments by nominal insurer

- (1) Where the nominal insurer pays compensation in respect of an injury to a worker, this part applies as if a reference to the worker's employer were a reference to the nominal insurer.
- (2) Where the nominal insurer and an employer both pay compensation in respect of an injury suffered by a worker, the rights of the nominal insurer under this part in relation to that payment have priority over the rights of the employer.

**U 22 Remedies both against the employer and a stranger**

If an injury in respect of which compensation is payable under this Act is caused under circumstances which appear to create a legal liability in some person other than the employer to pay damages in respect of the injury—

- (a) the worker may take proceedings against that person to recover damages and may also make a claim against the employer under this Act; and
- (b) where the worker receives both amounts under this Act and damages from that other person—he or she shall repay to the employer so much of those amounts as does not exceed the amount of the damages received from that person; and
- (c) upon notice to that person, the employer shall have a first charge upon moneys payable by that person to the worker to the extent of any amounts which the employer has paid to the worker under this Act; and
- (d) where the worker has received amounts under this Act, but no damages or less than the full amount of the damages to which he or she is entitled—the person liable to pay the damages shall indemnify the employer against so much of the amounts paid to the worker as does not exceed the damages for which that person is liable; and
- (e) payment of money by that person to the employer under paragraph (c) or (d) shall, to the extent of the amount paid, be a satisfaction of the liability of that person to the worker.

**U 23 Liability arising independently of this Act**

- (1) Compensation is not payable under this Act in respect of an injury to a worker to the extent to which—
  - (a) workers compensation for that injury has been paid under the law of a place outside the Territory; or

- (b) a judgment or agreement for damages has been obtained in respect of the injury from the worker's employer independently of this Act.
- (2) If a worker or a dependant of a worker obtains compensation under this Act in respect of an injury to the worker, and, subsequently in respect of the injury, the person to whom that compensation was paid obtains workers compensation under a law of a place outside the Territory, or obtains from the worker's employer a judgment or agreement for damages independently of this Act, the employer is entitled to recover from that person an amount equal to the least of the following amounts:
- (a) the amount of the compensation obtained under this Act;
  - (b) if the person has obtained workers compensation under a law of a place outside the Territory in respect of the injury—the amount of the compensation, unless paragraph (d) applies;
  - (c) if the person has obtained a judgment or agreement for damages independently of this Act in respect of the injury—the amount of the judgment or agreement, unless paragraph (d) applies;
  - (d) if the person has obtained both workers compensation under a law of a place outside the Territory, and a judgment or agreement for damages independently of this Act, in respect of the injury—the net amount to which the person is entitled under that law in respect of the compensation and the damages.

**U** **23A Dependants recovering damages and not claiming compensation**

- (1) This section applies where—
- (a) an employer pays compensation to a dependant of a deceased worker in respect of an injury that resulted in the death of a worker; and

- (b) damages in respect of the injury have been recovered from the employer or any other person by another dependant of the deceased worker (a *non-claiming dependant*); and
  - (c) no claim for compensation in respect of the injury has been made by or on behalf of the non-claiming dependant.
- (2) Where there is only 1 non-claiming dependant, he or she is liable to pay to the employer—
- (a) if the amount of the damages recovered by the non-claiming dependant is less than the total amount of compensation paid to the dependants of the worker in respect of the worker's injury—the amount of the damages; or
  - (b) in any other case—the amount of the compensation.
- (3) Where there is more than 1 non-claiming dependant, each such dependant is liable to pay to the employer—
- (a) an amount calculated in accordance with the formula—

$$C \times \frac{D}{TD}$$

where:

**C** means the total amount of the compensation paid in respect of the worker's injury to dependants of the worker.

**D** means the amount of damages recovered by the non-claiming dependant in respect of the injury to the worker.

**TD** means the total of the amounts of damages recovered by all the non-claiming dependants; or

- (b) if the amount of the damages recovered by the non-claiming dependant is less than the amount calculated in accordance with the formula in paragraph (a)—the amount of the damages.
- (4) For subsections (2) and (3), the amount of the compensation paid by the employer in respect of the worker's injury does not include—

- (a) any amount paid to a dependant of the worker who is not entitled to recover damages in respect of the worker's injury; or
- (b) any amount paid for the benefit of a dependent child of the worker under schedule 1, clause 1 (a) (i).

### **23B Discharge of liability out of payments into court**

- (1) Where a worker or a dependant of a deceased worker is liable under section 22 or 23A to pay an amount to the worker's employer and the Magistrates Court or any person appointed by the Magistrates Court for the purpose holds on behalf of the worker or the dependant—
  - (a) an amount of money, being compensation payable for the benefit of, or damages awarded to, the worker or the dependant; or
  - (b) investments acquired out of such an amount;the court or that person shall—
  - (c) deduct from that amount; or
  - (d) realise any or all of the investments and deduct from the proceeds of the realisation;an amount not exceeding the amount that the worker or dependant is so liable to pay the employer, and shall pay the amount deducted to the employer.
- (2) The payment of an amount to an employer under subsection (1) shall be a discharge of the liability—
  - (a) of the worker or dependant to the employer; and
  - (b) of the Magistrates Court or other person to the worker or dependant;to the extent of the amount paid.

## **U** Part 5 Inspection

### **U** 23C Definitions for pt 5

In this part:

*connected*—a thing is connected with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, or it is intended to be used, to commit the offence.

*occupier*, of premises, means a person believed by an inspector, on reasonable grounds, to be the occupier of, or in charge of, the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, or will be, committed.

*premises* includes—

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises mentioned in paragraph (a) or (b)).

### **U** 23D Inspectors

- (1) There may be 1 or more inspectors for this Act.
- (2) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include performing the functions of an inspector.
- (3) An inspector shall be any public servant for the time being performing the duties of a public service office referred to in subsection (3).

**U 23E Identity cards**

- (1) The chief executive shall issue to an inspector an identity card that specifies the inspector's name and office, and on which appears a recent photograph of the inspector.
- (2) Upon ceasing to occupy, or to act in, an office of inspector, a person shall not, without reasonable excuse, fail to return his or her identity card to the chief executive.

Maximum penalty: 1 penalty unit.

**U 23F Provision of information to inspectors**

- (1) An inspector may, by notice in writing given to an employer, require the employer to provide to the inspector, within 28 days after the notice is given—
  - (a) a certificate from a registered auditor stating the total amount of wages paid during the period specified in the notice to workers of this Territory employed by the employer; and
  - (b) a statutory declaration setting out—
    - (i) the determined categories of workers of this Territory employed by the employer; and
    - (ii) the total amount of wages paid in respect of each of those categories of workers;

during the period specified in the notice.
- (2) An inspector may, by notice in writing given to an employer, require the employer—
  - (a) to produce for inspection any prescribed insurance policy to which the employer is a party; and
  - (b) to furnish such related information as the inspector specifies in the notice;

within the time and in the manner stated in the notice.

- (3) A registered auditor shall not knowingly supply false, misleading or incomplete information in a certificate provided for the purposes of subsection (1).

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

- (4) An employer shall not, without reasonable excuse, fail to comply with a notice served on the employer in accordance with subsection (1) or (2).

Maximum penalty: 50 penalty units.

- (5) A reference in this section to an *employer* shall be taken to include a reference to a person whom an inspector believes, on reasonable grounds, is an employer.

### **23G Entry and inspection of premises**

- (1) If an inspector believes on reasonable grounds that commercial premises are used by an employer in connection with the employment of a worker by the employer, the inspector may, while the premises are being so used, enter those premises for the purpose of ensuring that this Act is complied with.

- (2) An inspector may enter any premises, and may exercise the powers of an inspector under subsection (3), if the entry is made, and the powers are exercised—

- (a) pursuant to a warrant issued under section 23I;
- (b) with the consent of the occupier of the land or premises; or
- (c) pursuant to an order of a court.

- (3) An inspector who enters premises in accordance with this section may—

- (a) require any person on the premises to produce for inspection any documents or things relating to the employment of workers by the employer using the premises; and



- (b) make copies of, or take extracts from, any such documents; and
  - (c) require any person on the premises to produce information relating to such documents or things, or information relating generally to the employment of workers by the employer using the premises; and
  - (d) require—
    - (i) the occupier; or
    - (ii) an employer who is on the premises; or
    - (iii) a person whom the inspector believes on reasonable grounds is an employer and who is on the premises;to supply—
    - (iv) his or her address; and
    - (v) the name under which the business carried on on the premises operates.
- (4) An inspector who enters premises in accordance with this section is not authorised to remain on the premises if, at the request of the occupier of the premises, the inspector does not show the occupier the identity card issued to the inspector under section 23E.
- (5) A person must not, without reasonable excuse, contravene a requirement under this section.

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

- (6) In this section:

***commercial premises*** means premises in which a business, trade, profession or calling is carried on, excluding any part of the premises that is used for residential purposes.

### **23H Consent to entry and inspection**

- (1) Before seeking the consent of the occupier of premises or a place for the purposes of section 23G (2) (b), an inspector shall inform the occupier that he or she may refuse to give that consent.
- (2) If an inspector obtains the occupier's consent for the purposes of section 23G (2) (b), he or she shall ask the occupier to sign a written acknowledgment—
  - (a) that the occupier has given the inspector consent, for those purposes, to enter the occupier's premises and to exercise the powers of an inspector under section 23G (3); and
  - (b) that the occupier has been informed that he or she may refuse to give that consent; and
  - (c) of the day on which, and the time at which, that consent was given.
- (3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of section 23G (2) (b), and an acknowledgment in accordance with subsection (2) signed by the occupier is not produced in evidence, it is to be presumed that the occupier did not consent unless the contrary is established.

### **23I Search warrants**

- (1) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be, in or on any premises any thing of a particular kind connected with a particular defined offence, and the information sets out those grounds, the magistrate may issue a search warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—
  - (a) to enter the premises; and
  - (b) to search the premises for things of that kind; and

- (c) to exercise the powers of an inspector under section 23G (3) in relation to the premises or place.
- (2) A magistrate shall not issue a warrant unless—
- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) A warrant shall—
- (a) state the purpose for which it is issued; and
  - (b) specify the nature of the offence (if any) in relation to which the entry and search are authorised; and
  - (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night; and
  - (d) include a description of the kinds of things in relation to which the powers under section 23G (3) may be exercised; and
  - (e) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

## **U** Part 6 Procedure for payment of compensation

### **U** 24 Arbitration

All matters and questions (other than prosecutions for offences) arising under this Act shall, where no other provision is made in this Act, in the absence of agreement, be settled by arbitration in accordance with schedule 4.

### **U** 25 Time for taking proceedings

- (1) Proceedings for the recovery of compensation for an injury shall not be maintainable unless notice of the injury has been given as soon as practicable after it has happened, and before the worker has voluntarily left the employment in which he or she was injured and unless the claim for compensation has been made—
  - (a) within 6 months after the occurrence of the injury; or
  - (b) in case of death—within 6 months after advice of the death has been received by the claimant.
- (2) The want of notice or any defect or inaccuracy in the notice shall not be a bar to the maintenance of the proceedings if it is found in the proceedings for the settling of the claim that the employer's defence is not, or would not be, if a notice or an amended notice were then given and the hearing postponed, prejudiced by the want, defect or inaccuracy, or that the want, defect or inaccuracy was occasioned by mistake or other reasonable cause.
- (3) The failure to make a claim within the period specified in subsection (1) shall not be a bar to the maintenance of the proceedings if it is found that the failure was occasioned by mistake or other reasonable cause.

- (4) Notice in respect of any injury to which this Act applies shall contain the name and address of the person injured, and a statement in ordinary language of the cause of the injury, and the date on which the injury happened, and shall be served on the employer, or, if there is more than 1 employer, upon 1 of the employers.
- (5) The notice may be served by delivering it at, or sending it by post in a registered letter properly address to, the residence or place of business of the person on whom it is to be served.
- (6) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering it to, or by sending it by post in a registered letter addressed to the employer at, the office, or if there be more than 1 office, any of the offices of the body.

### **25A Admissibility of statements by injured workers**

- (1) A written statement in relation to a worker's injury which is given by the worker to his or her employer or to the employer's insurer is not to be admitted in evidence on behalf of such an employer or insurer in any proceedings under this Act unless the employer or insurer, as the case may be, has, not later than 14 days before the proceedings are heard, given to the worker, or his or her lawyer or agent, a copy of the statement.
- (2) In this section:  
*insurer* means—
  - (a) an approved insurer; or
  - (b) the nominal insurer.

### **26 Appeals**

- (1) Where a committee or the Magistrates Court gives a decision or makes an order or award with respect to any matter which 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 specified section 387 (2) of that Act; and
  - (b) in the case of an appeal from a decision, order or award by a committee—as if the decision, order or award was a decision, order or award of the Magistrates Court.

## **U** Part 6A                      **Weekly compensation payments**

### **U** 26A    **Notice to employer's insurer**

Where a worker makes a claim for weekly compensation payments, the employer (not being an exempt employer) shall, within 7 days after the day on which the worker lodges the claim with the employer, lodge the claim with the employer's insurer.

Maximum penalty: 10 penalty units.

### **U** 26B    **Commencement**

(1) Where a worker makes a claim for weekly compensation payments the employer shall, within the prescribed period, in accordance with the direction of the employer's insurer (if any)—

- (a) commence making weekly compensation payments in accordance with schedule 1; or
- (b) reject the claim by written notice to the worker.

Maximum penalty: 50 penalty units.

(2) In subsection (1):

*prescribed period* means—

- (a) in relation to a claim lodged by a worker with an exempt employer—the period ending at the expiration of 28 days after the day on which the worker lodges the claim with the employer; or
- (b) in relation to a claim lodged with any other employer—the period ending 21 days after the day on which the employer lodges the claim with the employer's insurer.

**U 26BA Notice by worker**

- (1) A worker who is receiving weekly compensation payments shall give written notice to the employer as soon as practicable after the worker becomes aware of any change of circumstance that may affect the worker's entitlement to compensation.

Maximum penalty: 10 penalty units.

- (2) Nothing in subsection (1) requires a worker to notify the employer of a change in circumstances—
- (a) caused by or originating from the employer; or
  - (b) which the worker believes on reasonable grounds that the employer is aware of; or
  - (c) which the worker could not reasonably be expected to know might affect his or her entitlement to compensation.

**U 26C Termination**

- (1) An employer may, within 12 months after the day on which a worker lodges a claim for weekly compensation payments with the employer, terminate those payments by notice to the worker in accordance with subsection (2) if, in the opinion of the employer's insurer or, in the case of an exempt employer, the employer, based on reasonable grounds, the worker is no longer entitled to receive the payments.
- (2) A notice under subsection (1) shall—
- (a) be in writing in the approved form; and
  - (b) specify the following:
    - (i) the day on which the termination is to take effect, being a day not less than 8 weeks after the day on which the notice is given to the worker;



- (ii) the grounds for the insurer's or employer's opinion that the worker is not entitled to continue receiving the weekly payments;
- (iii) the options available to the worker to have the decision to terminate payments reviewed.

### **U 26D Review of termination**

- (1) Where an employer gives notice of termination of weekly compensation payments under section 26C, the worker to whom the notice is given may apply to the court to have the weekly payments continue or recommence.
- (2) On receipt of an application from a worker under subsection (1), if the court is satisfied that the worker is entitled to receive the payments that are the subject of the application, the court shall order that the payments continue or recommence.
- (3) Where the court orders that weekly compensation payments recommence, it may order that the employer make an additional payment to the worker of such amount as the court considers appropriate, being an amount not exceeding the amount that the worker could have received by way of weekly compensation for the period during which those payments were not made.
- (4) On application by any party, or of its own motion, the court may make such interim orders in relation to an application under subsection (1) as it considers appropriate pending its final decision.

### **U 26E Court-approved termination**

- (1) An employer may apply to the court for authority to terminate weekly compensation payments paid to a worker under this Act.
- (2) An employer shall give the affected worker notice in the approved form of the employer's intention to apply to the court for authority to terminate weekly compensation payments to the worker.

- (3) Where the court is satisfied that the affected worker is not entitled to receive weekly compensation payments, it shall make an order authorising the employer to terminate the payments to the worker after a specified day.
- (4) The day specified under subsection (3) shall be after the expiration of 8 weeks from the day on which the employer gave the worker notice under subsection (2).

**U 26F Notice to nominal insurer**

An employer who gives notice of the termination of weekly compensation payments to a worker under section 26C or 26E (2) shall, as soon as is practicable, give a copy of the notice to the nominal insurer.

Maximum penalty: 5 penalty units.

**U Part 6B On-the-spot fines****U 26G Definitions for pt 6B**

In this part:

*commissioner* means the Occupational Health and Safety Commissioner.

*determined fee* means the fee determined under section 28 (Determination of fees) for this part.

*final infringement notice* means a notice under section 26J.

*infringement notice* means a notice under section 26H.

*on-the-spot fine*, in relation to a prescribed offence, means—

- (a) in the case of a natural person—the fine prescribed for that offence; or
- (b) in the case of a body corporate—5 times the amount of that fine.

*relevant amount* means—

- (a) in relation to an infringement notice—the on-the-spot fine for the alleged prescribed offence to which the notice relates; or
- (b) in relation to a final infringement notice—the on-the-spot fine for the alleged prescribed offence to which the notice relates, in addition to the determined fee.

*relevant period for payment* means—

- (a) in relation to an infringement notice—28 days after the date of the notice; or
- (b) in relation to a final infringement notice—14 days after the date of the notice; or

- (c) such extended period as the commissioner allows under section 26M (4) (b).

## **U 26H Infringement notices**

- (1) An inspector may serve an infringement notice on a person if the inspector believes on reasonable grounds that the person has committed a prescribed offence.
- (2) An infringement notice must—
  - (a) identify the inspector who issues the notice; and
  - (b) state the full name, or surname and initials, and address of the person on whom it is served; and
  - (c) specify the nature of the alleged offence and the amount of the on-the-spot fine; and
  - (d) specify the day, time and place of the alleged commission of the offence; and
  - (e) include a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay the on-the-spot fine to the commissioner within—
    - (i) 28 days after the date of the notice; or
    - (ii) if the determined fee is paid in addition—14 days after the date of a final infringement notice; or
    - (iii) such extended period as is allowed under this part; and
  - (f) specify the place at which, and the manner in which, the fine may be paid; and
  - (g) include a statement of the possible consequences if the offence were to be prosecuted in court, including the maximum penalty applicable; and

- (h) include a statement about the procedures for obtaining an extension of time under this part; and
- (j) include a statement about the procedures for the withdrawal of the notice under this part; and
- (k) be dated and signed by the inspector who serves the notice.

*Note* If a form is approved under s 29 (Approved forms) for an infringement notice, the form must be used.

## **U** 26J Final infringement notices

- (1) An inspector may serve a final infringement notice on a person where, after the service on the person of an infringement notice—
  - (a) within 28 days after the date of the infringement notice—
    - (i) the person fails to pay the on-the-spot fine; and
    - (ii) the person fails to apply for the withdrawal of the infringement notice under section 26L; or
  - (b) if the person applies for the withdrawal of the infringement notice under section 26L—
    - (i) the application is rejected; and
    - (ii) the person fails to pay the on-the-spot fine within the extended period allowed under section 26M (4) (b).
- (2) A final infringement notice must—
  - (a) identify the inspector who serves the notice; and
  - (b) state the full name, or surname and initials, and address of the person on whom it is served; and
  - (c) specify the nature of the alleged offence and the amount of the on-the-spot fine; and
  - (d) specify the day, time and place of the alleged commission of the offence; and

- (e) specify the date of the relevant infringement notice, and include a statement to the effect that the person has not paid the on-the-spot fine for the alleged offence to which the notice relates; and
- (f) include a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay the on-the-spot fine, in addition to the determined fee, to the commissioner within—
  - (i) 14 days after the date of the notice; or
  - (ii) such extended period as is allowed under this part; and
- (g) specify the place at which, and the manner in which, the fine and fee may be paid; and
- (h) include a statement of the possible consequences if the offence were to be prosecuted in court, including the maximum penalty applicable; and
- (j) include a statement about the procedures for obtaining an extension of time under this part; and
- (k) include a statement about the procedures for the withdrawal of the notice under this part; and
- (m) be dated and signed by the inspector who serves the notice.

### **26K Discharge of liability for prescribed offences**

- (1) This section applies where an infringement notice or a final infringement notice has been served on a person in respect of a prescribed offence and, before the expiration of the relevant period for payment—
  - (a) the relevant amount is paid in accordance with the notice; or
  - (b) the relevant notice is withdrawn.
- (2) Where this section applies—

- (a) any liability of the person in respect of the offence is discharged; and
  - (b) no further proceedings shall be taken in respect of the offence; and
  - (c) the person shall not be regarded as having been convicted of the offence.
- (3) For this section, where a cheque is tendered in payment of the relevant amount, such payment shall not be taken to have been made unless and until the cheque is honoured on presentation.

**U 26L Application for withdrawal of infringement notice**

- (1) A person on whom an infringement notice or a final infringement notice is served in relation to the alleged commission of a prescribed offence may, by notice in writing to the commissioner within the relevant period, apply for the withdrawal of the notice.
- (2) A person shall not make more than 1 application under this section in relation to any particular alleged commission of a prescribed offence.

**26M Withdrawal of infringement notices**

- (1) On receipt of an application under section 26L, the commissioner may withdraw the relevant infringement notice or final infringement notice if satisfied on reasonable grounds that any of the following grounds is made out:
  - (a) the applicant did not commit the offence;
  - (b) the applicant had a reasonable excuse for committing the act constituting the offence;
  - (c) it would be unreasonable in the circumstances to prosecute the applicant for the commission of the offence.

- (2) If the commissioner withdraws an infringement notice or final infringement notice, he or she shall give the person on whom the notice was served written notice of the decision.
- (3) A notice under subsection (2) shall—
- (a) specify the infringement notice or final infringement notice that is withdrawn; and
  - (b) include a statement of the effect of section 26K (1) and (2).
- (4) If the commissioner does not withdraw an infringement notice or final infringement notice under subsection (1), the commissioner shall—
- (a) give the person written notice of the decision; and
  - (b) extend the period within which the relevant amount is to be paid, by a period of—
    - (i) in the case of a decision not to withdraw an infringement notice—28 days commencing on the date of the notice under paragraph (a); or
    - (ii) in the case of a decision not to withdraw a final infringement notice—14 days commencing on the date of the notice under paragraph (a).
- (5) If the commissioner does not give notice to a person under subsection (2) or (4) within 60 days after the receipt of an application for withdrawal of an infringement notice or a final infringement notice under section 26L, the notice is to be taken to have been withdrawn.
- (6) Where an infringement notice or final infringement notice served on a person is withdrawn under this section, the commissioner shall refund any amount paid under section 26H or 26J in payment of the relevant on-the-spot fine.



**26N Prosecution of prescribed offences**

- (1) The commissioner shall not institute a prosecution for an offence in respect of which an infringement notice has been served on a person—
  - (a) until the expiration of the period of 14 days after the date of service of a final infringement notice in relation to that offence; or
  - (b) if the person applies for the withdrawal of the final infringement notice under section 26L—unless and until the application is rejected and the extended period granted under section 26M (4) (b) has expired.
- (2) Nothing in section 26H or 26J shall be construed as—
  - (a) affecting the liability of a person to be prosecuted for a prescribed offence in relation to which an infringement notice has not been served;
  - (b) subject to subsection (1), prejudicing or affecting the institution or prosecution of proceedings for a prescribed offence; or
  - (c) limiting the amount of the fine that may be imposed by the Magistrates Court in respect of a prescribed offence.
- (3) Where a prosecution is instituted for an offence in respect of which an infringement notice has been served, the commissioner shall refund any amount paid under section 26H or 26J in payment of the on-the-spot fine.

**U 26P Non-antecedent value of infringement notice offences**

- (1) For the *Crimes Act 1900*, section 429A, in sentencing an accused for any offence, a court shall not have regard to—
  - (a) the alleged commission of any infringement notice offence;

- (b) the circumstances surrounding any infringement notice offence; or
  - (c) the investigation of any infringement notice offence, or any related action under this part.
- (2) In subsection (1):
- infringement notice offence*, in relation to an accused, means an alleged offence—
- (a) in relation to which an infringement notice has been served on the accused; and
  - (b) which has not been found proved by a court.

**U 26Q Service of notices**

- (1) For this part, a notice may be served on the person to whom it is directed—
- (a) by delivering the notice personally; or
  - (b) by sending the notice by post addressed to the person at the person's last-known place of residence or business; or
  - (c) by leaving the notice at the person's last-known place of residence or business with some other person who is apparently—
    - (i) over the age of 16 years; and
    - (ii) an occupant of the place, or employed at that place.
- (2) Nothing in this section prevents the service on a person of more than 1 infringement notice or final infringement notice in respect of the same alleged offence, but it is sufficient for the application of section 26K to such a person for the person to pay the relevant amount in accordance with any of the notices so served.
- (3) Where an infringement notice is served on a child and the person serving the notice believes, on reasonable grounds, that the child is

residing with a person who stands in place of a parent to that child, the person serving the notice shall serve a copy of the notice on that person.

**U 26R Evidence**

- (1) For this part, a document that purports to have been signed by the commissioner shall be taken to have been so signed unless the contrary is proved.
- (2) In a prosecution for a prescribed offence, a certificate signed by the commissioner stating any of the following matters is evidence of the matters so stated:
  - (a) that a notice was served under this part on a specified person on a specified date;
  - (b) where an infringement notice or a final infringement notice has been served on a person under this part, that—
    - (i) further time for payment was, or was not, allowed under section 26M (4) (b);
    - (ii) the notice was not withdrawn; or
    - (iii) the relevant amount was not paid in accordance with the notice within the relevant period for payment.



- (4) Where—
- (a) a natural person is convicted of a defined offence; and
  - (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.
- (6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

**U 27B Administrative review**

- (1) Application may be made to the administrative appeals tribunal for the review of the decision of the Minister—
- (a) under section 17 (1) (b) to refuse to approve an insurer; or
  - (b) under section 17 (2) to revoke the approval of an insurer; or
  - (c) under section 17C (1) (b) to refuse to exempt an employer; or
  - (d) under section 17C (4) (a) to suspend the exemption of an employer; or
  - (e) under section 17C (4) (b) to revoke the exemption of an employer.
- (2) A notice under a provision referred to in subsection (1) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

**U 27D Funds for administration of Act**

- (1) The costs of administration of this Act shall be paid out of moneys provided in accordance with this section by approved insurers and exempt employers and any other moneys received under this Act.
- (2) Liability for the costs of administration of this Act in respect of a financial year shall be apportioned by the Minister amongst those who were approved insurers or exempt employers during that year.
- (3) In making an apportionment under subsection (2) in respect of a financial year, the Minister shall have regard so far as practicable to—
  - (a) the premium incomes received by each approved insurer in respect of prescribed insurance policies in that financial year; and
  - (b) the premium that would have been payable by each exempt employer if the employer had obtained, in respect of that year (or the part of that year during which the employer was an exempt employer), a prescribed insurance policy.
- (4) Where the Minister makes an apportionment under this section, the Minister shall notify, in writing, each approved insurer and exempt employer concerned of particulars of the apportionment and require the insurer or employer to pay to the Territory the apportioned amount, within such time as is specified in the notice.
- (5) An amount specified in a notice to a person under subsection (4) and unpaid at the expiration of the time specified in the notice is a debt due and owing to the Territory by the approved insurer or exempt employer and may be sued for and recovered by the Territory in a court of competent jurisdiction.
- (6) Money received under this section shall be paid into a departmental bank account maintained by the chief executive in accordance with the *Financial Management Act 1996*, section 34 (2).

**28 Determination of fees**

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

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

- (2) A determination is a disallowable instrument.

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

**29 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

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

- (4) A form prescribed under the regulations immediately before the commencement of this section is, after the commencement, taken to be an approved form.
- (5) However, the form need not be notified under the *Legislation Act 2001*.
- (6) Subsections (4) and (5) are laws to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.
- (7) Subsections (4) to (6) and this subsection expire 1 year after this section commences.

**U 30 Regulation-making power**

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

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

- (2) The regulations may make provision in relation to—
  - (a) the procedure in relation to the medical examination of injured workers; and
  - (b) the duties of medical referees appointed under this Act; and
  - (c) fees and expenses to be paid for medical examinations or medical treatment; and
  - (d) the procedure in relation to compulsory insurance and approval of insurance companies.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.



**U Part 8 Transitional****31 Injuries received before 13 January 1998**

If the death or incapacity of a worker, or a loss or condition suffered by the worker, results from an injury received, or deemed to have been received by virtue of section 9, before 13 January 1998, this Act as in force immediately before 13 January 1998 continues to apply in relation to the injury.

## **U** Schedule 1      Scale and conditions of compensation

(see s 7)

1AA In this schedule:

**child**, in relation to a worker, means an unmarried child of the worker who is—

- (a) under the age of 16 years; or
- (b) a full-time student.

**full-time student** means a person who—

- (a) has attained the age of 16 years but not the age of 25 years; and
- (b) is receiving full-time education at a secondary or tertiary educational institution.

**prescribed person**, in relation to a worker, means a person who has attained the age of 16 years and is—

- (a) a member of the worker's family; or
- (b) caring for a child of the worker, being a child who is wholly or mainly dependent on the worker's earnings.

1 The amount of compensation shall be—

- (a) where the death of the worker results from the injury—
  - (i) if the worker leaves any dependants wholly dependent on his or her earnings—\$20 000 and, in respect of each dependent child of the worker, payment at the rate of \$7 per week from the date of death until the person ceases to be a child; and
  - (ii) if the worker does not leave any dependants wholly dependent upon his or her earnings, but leaves dependants in part dependent upon his or her earnings—

such sum, not exceeding in any case the amount payable under subparagraph (i) as is reasonable and proportionate to the loss to the dependants resulting from the cessation of the earnings of the worker; and

- (iii) such sum, not exceeding \$450, on account of the expenses of the worker's funeral as is reasonable; and
- (b) where the worker is totally incapacitated for work by the injury, in respect of the period of the worker's incapacity—
- (i) \$57 for each week, and a proportionate amount for each additional day; and
  - (ii) if the worker had a spouse at the date of the injury—\$15 for each week, and a proportionate amount for each additional day, during which the spouse is wholly or mainly dependent on the worker's earnings; and
  - (iii) if the worker has no spouse, and there is a prescribed person in relation to the worker—\$15 for each week, and a proportionate amount for each additional day, during which the prescribed person is wholly or mainly dependent on the worker's earnings, in respect of 1 prescribed person only; and
  - (iv) if the worker has a child, whether born before or after the date of the injury, but not including a child of a marriage or exnuptial relationship formed after that date—\$7 for each week, and a proportionate amount for each additional day, during which the child is wholly or mainly dependent on the worker's earnings; and
  - (v) if the prescribed amount applicable to a worker in respect of a week, being 1 of the first 26 weeks of the incapacity, exceeds an amount calculated by adding to \$57 the amount or amounts (if any) payable to the worker under subparagraphs (ii), (iii) and (iv)—the amount of the excess for each week, and a proportionate amount for each day; and

- (c) where the worker is partially incapacitated for work by the injury—a weekly payment during his or her incapacity—
  - (i) of the amount (if any) by which the weekly amount that he or she is earning, or is able to earn in some suitable employment or business, after the injury is less than his or her weekly pay at the date of the injury, or of the amount of \$57, whichever is the less; or
  - (ii) of the amount (if any) by which the weekly amount that he or she is earning, or is able to earn in some suitable employment or business, after the injury is less than the weekly amount that would have been payable to him or her under paragraph (b), if he or she had been totally incapacitated;whichever is the greater.

1A For clause 1 (b), the prescribed amount applicable to a worker in respect of a week is—

- (a) in the case of a worker who is, during that week, employed under conditions of employment providing for sick leave payments—an amount equal to the sick leave payment that the worker would receive in respect of that week if, during that week, he or she were entitled to, and were granted, sick leave on full pay by reason of an illness that is not attributable to an injury in relation to which this Act applies; or
- (b) in any other case—an amount equal to the amount of the earnings that would, but for the injury, be payable to the worker in respect of that week.

1B For clause 1A—

- (a) a worker who would be, or would have been, employed but for his or her incapacity shall be taken to be employed or to have been employed, as the case may be; and
- (b) a reference to a sick leave payment is a reference to a payment by way of salary, wages or pay in respect of a period during

which the worker concerned is absent from employment by reason of illness; and

- (c) a reference to earnings, in relation to a worker—
  - (i) includes a reference to the earnings that would be, or would have been, payable to the worker but for his or her incapacity; and
  - (ii) does not include a reference to—
    - (A) a payment in respect of overtime; or
    - (B) an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the worker in respect of his or her employment; or
    - (C) income received in respect of engaging in a professional sporting activity.

2 Notwithstanding anything contained in clause 1—

- (a) where death results from the injury—
  - (i) any amount paid or payable before the death of the worker by way of weekly payments in respect of his or her total or partial incapacity for work shall not be deducted from the sum payable under clause 1 (a) (i), or shall be disregarded in determining the sum payable under clause 1 (a) (ii), as the case may be; but
  - (ii) the amount by which any lump sum, paid to a worker in pursuance of clause 13 or section 10 before the death of the worker, exceeds the total of all weekly payments which would have been payable under clause 1 (b) or (c), if they had continued until the date of the worker's death, shall be deducted from the sum payable under clause 1 (a) (i), or shall be taken into account in determining the sum payable under clause 1 (a) (ii), as the case may be,

provided that the sum so payable is not reduced to less than \$2 000; and

- (b) where the worker is totally or partially incapacitated for work by the injury—
  - (i) no payment shall be made under clause 1 (b) or (c) which is in excess of the amount of the weekly pay of the worker at the date of the injury; and
  - (ii) subject to clause 2A regard shall be had to any payment, allowance or benefit which the worker receives from his or her employer during the period of the worker's incapacity and the amount of the weekly payment otherwise payable under clause 1 (b) or (c) shall be reduced to such amount (if any) as is just and proper; and
  - (iii) if the worker is a minor who is not entitled under the terms of any award order or determination of an industrial authority, any industrial agreement or any law to receive the same rate of pay as an adult, '\$42.75' shall be deemed to be substituted for '\$57.00' in the application of the provisions of clause 1 (b) or (c) in relation to the worker while he or she remains such a minor; and
- (c) where the worker is totally incapacitated for work by the injury—eligibility for weekly payment under clause 1 (b) in respect of a child born after the date of the injury shall not accrue until the date of birth of the child.

2A For clause 2 (b) (ii), no regard shall be had to any payment, allowance or benefit that is payable to the worker by his or her employer under the terms of an award, order or determination of an industrial authority, under the terms of an industrial agreement or under the terms of the contract of service or apprenticeship between the worker and his or her employer whereby provision is made, in the event of the worker being totally or partially incapacitated for work in circumstances to which this Act applies, for the payment by

the employer to the worker of a weekly amount equal to the amount by which the weekly amount payable as compensation is less than a weekly amount ascertained or calculated in accordance with those terms.

3 The amount of family allowance paid under the *Social Security Act 1947* (Cwlth), part 10 in respect of a child shall be disregarded in ascertaining, for this schedule, whether or not that child is or was dependent upon the earnings of the worker.

4 In this schedule:

(a) **pay** means the salary or wages of the worker, and includes—

(i) where at the date of the injury the worker was engaged in part-time work—his or her earnings from any other employment; and

(ii) unless otherwise prescribed—any allowance payable to the worker in respect of his or her employment;

but subject to the regulations, does not include any allowance which is intermittent or which is payable in respect of special expenses incurred or likely to be incurred by the worker in respect of his or her employment; and

(b) any reference to the weekly pay of the worker at the date of the injury means, if the rate of pay of workers of the same class is subsequently varied by competent authority or following upon a variation in the cost of living, the rate of pay as so varied.

5 Where a worker has given notice of an injury, or has made a claim for compensation for an injury, the worker shall, if so required by the employer, submit himself or herself for examination by a medical practitioner provided and paid by the employer, and, if the worker refuses to submit himself or herself to the examination, or in any way obstructs the examination, the worker's right to compensation, and to take or prosecute any proceedings under this Act in relation to compensation, shall be suspended until the examination has taken place.

6 A payment in the case of death (including a payment under clause 9A) shall, unless otherwise ordered in pursuance of the provisions of this schedule, be paid into the court and any sum so paid into court shall, subject to rules of court, and the provisions of this schedule, be invested, applied or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, or (except in the case of a payment under clause 9A) dealt with in accordance with the *Public Trustee Act 1985*, section 25 and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the worker leaves no dependants, be made to his or her legal personal representative, or if the worker has no such representative, to the person to whom the expenses of medical treatment and the funeral are due.

6A The court may, in the case of weekly payments referred to in clause 1 (a) (i) payable in respect of a particular child, order that, instead of those payments being paid into court, those payments be made, until the court otherwise orders, to such person as the court specifies in the order to be applied for the benefit of the child.

7 (1) Where weekly payments (other than payments referred to in clause 1 (a) (i)) are payable to a person under a legal disability, the court may order that, until it otherwise orders—

(a) the payments be paid into court; or

(b) the payments be made to such person as the court specifies in the order to be applied for the benefit of the person under legal disability.

(2) Where a lump sum payment (other than a payment under clause 9A) is payable to a person under a legal disability, the payment shall, unless the court otherwise orders, be paid into court.

(3) Where under this clause the payment of a weekly payment or a lump sum payment is to be paid into court, the provisions of clause 6 with respect to payments into court in pursuance of that clause



and, in the case of a lump sum payment, the *Public Trustee Act 1985*, section 25 shall apply to sums paid into court under this clause.

- 7A An application for an order under clause 6A or 7 may be made on the application of the person liable to make the weekly payments or by or on behalf of the person to whom or in respect of whom payments are payable.
- 8 Where there are both total and partial dependants and an application is made to the court in accordance with the rules of court, the court may allot the compensation partly to the total and partly to the partial dependants.
- 9 Where, on application being made in accordance with rules of court, it appears to the court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case, the court may think just.
- 9A Where—
- (a) a weekly payment under clause 1 (a) (i) in respect of a child of a worker ceases to be payable; and
  - (b) the aggregate amount of such weekly payments is less than \$700;
- there is payable an additional amount of compensation equal to the difference between the aggregate amount and \$700.
- 10 Any worker receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself or herself for examination by a medical practitioner provided and paid by the employer and if the worker refuses to submit himself or

herself to the examination or in any way obstructs the examination, the worker's right to such weekly payments shall be suspended until the examination has taken place.

11 (1) A worker shall not be required to submit himself or herself for examination by a medical practitioner under clause 5 or 10 otherwise than in accordance with the regulations.

(2) Where a worker has so submitted himself or herself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself or herself, and the employer or the worker, as the case may be, has within 6 days after such examination furnished the other with a copy of the report of that practitioner as to the worker's condition, then, in the absence of agreement between the employer and the worker as to the worker's condition or fitness for employment, the registrar of the court may, on an application being made by either of the parties and on payment of such fee not exceeding \$2.00, as may be prescribed, refer the matter to a medical referee.

(3) The medical referee to whom the matter is so referred shall, in accordance with the regulations, give a certificate as to the condition of the worker and his or her fitness for employment, specifying, where necessary, the kind of employment for which the worker is fit and that certificate shall be conclusive evidence as to the matters so certified until such time as the worker's claim is the subject of arbitration in accordance with schedule 4.

(4) Where no agreement can be come to between the employer and the worker as to whether or to what extent the incapacity of the worker is due to the injury, this subclause shall, subject to the regulations, apply as if the question were a question as to the condition of the worker.

(5) If a worker, on being required so to do, refuses to submit himself or herself for examination by a medical referee to whom the matter has been so referred, or in any way obstructs the medical referee, his or her right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a

worker in receipt of a weekly payment, his or her right to that weekly payment shall be suspended until the examination has taken place.

(6) Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this clause, the forms to be used for these purposes and the fees to be paid under this clause.

- 12 A weekly payment (other than a weekly payment referred to in clause (1) (a) (i)) payable under this Act may be varied or ended by agreement or by arbitration under this Act or ended in accordance with section 26C or 26E.
- 13 Where, in any case other than one of total and permanent incapacity, any weekly payment (other than a weekly payment referred to in clause (1) (a) (i)) has been continued for not less than 6 months, the liability therefor may be redeemed by the payment of a lump sum of such amount as may be settled by agreement (subject to schedule 4, clause 10) or, upon application by or on behalf of the employer with the consent of the worker, by arbitration under this Act, and the lump sum may be ordered by the court to be invested or otherwise applied for the benefit of the person entitled thereto.
- 14 If a worker receiving a weekly payment ceases to reside in Australia, the worker shall thereupon cease to be entitled to receive any weekly payment, unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature or that the worker's absence from Australia is desirable for recuperative purposes. If a medical referee so certifies the worker shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter, so long as the worker proves in such a manner and at such intervals as may be prescribed, his or her identity and the continuance of the incapacity in respect of which the weekly payment is payable.
- 15 A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and

shall not pass to any other person by operation of law, nor shall any claim be set off against the amount of the payment or sum.

- 16 Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

**U** **Schedule 2**

(see s 10)

**Part 1** **Injuries in respect of which the amount of compensation specified in section 10 (1) is payable**

- Loss of both eyes
- Loss of sight in both eyes
- Loss of an only useful eye, the other being blind or absent
- Loss of sight in only useful eye, the other being blind or absent
- Loss of both hands
- Loss of hand and foot
- Loss of both feet

**Part 2** **Injuries in respect of which a percentage of the amount of compensation specified in section 10 (1) is payable**

column 1 nature of injury	column 2 percentage
loss of 1 eye, with serious diminution of the sight of the other.....	75
loss of 1 eye .....	40
loss of hearing.....	70
complete deafness of 1 ear .....	20
loss of right arm or greater part of right arm .....	80
loss of left arm or greater part of left arm .....	72
loss of lower part of right arm, right hand or five fingers of right hand.....	70
loss of lower part of left arm, left hand or five fingers of left hand .....	63
loss of right thumb .....	30
loss of left thumb .....	27

**Schedule 2**

**Part 2**

Injuries in respect of which a percentage of the amount of compensation specified in section 10 (1) is payable

Clause 31

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loss of right forefinger.....	20
loss of left forefinger.....	18
loss of right middle finger.....	16
loss of left middle finger.....	15
loss of right ring finger.....	14
loss of left ring finger.....	13
loss of right little finger.....	13
loss of left little finger.....	12
loss of total movement of joint of right thumb.....	14
loss of total movement of joint of left thumb.....	13
loss of distal phalanx or joint of right thumb.....	16
loss of distal phalanx or joint of left thumb.....	15
loss of portion of terminal segment of right thumb involving one-third of its flexor surface without loss of distal phalanx or joint.....	14
loss of portion of terminal segment of left thumb involving one-third of its flexor surface without loss of distal phalanx or joint.....	13
loss of two phalanges or joints of right forefinger.....	12
loss of two phalanges or joints of left forefinger.....	11
loss of two phalanges or joints of right middle or ring finger.....	11
loss of two phalanges or joints of left middle or ring finger.....	10
loss of two phalanges or joints of right little finger.....	10
loss of two phalanges or joints of left little finger.....	9
loss of distal phalanx or joint of right forefinger.....	10
loss of distal phalanx or joint of left forefinger.....	9
loss of distal phalanx or joint of other finger of right hand.....	8
loss of distal phalanx or joint of other finger of left hand.....	7
loss of leg above knee.....	75
loss of leg below knee.....	65
loss of foot.....	60
loss of great toe.....	20
loss of any other toe.....	8
loss of two phalanges or joints of any other toe.....	7
loss of phalanx or joint of great toe.....	10
loss of phalanx or joint of any other toe.....	6

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**Schedule 3**  
**Part 2**

Employer's insurance policy  
Injuries in respect of which a percentage of the amount of  
compensation specified in section 10 (1) is payable

Clause 31

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day of, 20 , and thereafter to 4 o'clock in the afternoon of the last day of any subsequent period in respect of which the premium shall have been paid to and accepted by the insurer, the employer shall be liable to pay compensation under the Act to or in respect of any person who is or is deemed by the Act to be a worker of such employer or to pay any other amount in respect of the employer's liability independently of the Act for any injury to any such person, then and in every such case, the insurer will indemnify the employer against all such sums for which the employer shall be so liable; the insurer will also pay all costs and expenses incurred with the written consent of the insurer in connection with the defence of any legal proceedings in which such liability is alleged.

Provided that this policy shall not extend to any business or occupation other than that described herein, unless and until particulars thereof shall have been supplied to and accepted by the insurer and the acceptance of such extension endorsed hereon by the insurer.

And it is hereby further agreed that the above indemnity is made subject to the due and proper observance and fulfilment by the employer of the conditions hereunder.

And the insurer shall be (a) directly liable to any worker, and in the event of the worker's death to his or her dependants, to pay the compensation for which the employer is liable and in respect of which the employer is indemnified under this policy, and (b) bound by and subject to any order, decision or award made against the employer of any such worker under the provisions of the Act or in respect of the employer's liability independently of the Act and in respect of which the employer is indemnified under this policy.

Provided lastly that this policy shall be subject to the Act and the rules and regulations made thereunder, as in force from time to time, all of which shall be deemed to be incorporated in and form part of this policy.



## Conditions

### Meaning of worker

1A In this policy—

*worker*, in relation to the employer, means a worker of this Territory within the meaning of the *Workers Compensation Act 1951* of the Australian Capital Territory who is employed by the employer, and *workers* has a corresponding meaning.

### Notices

- 1 Every notice or communication to be given or made under this policy shall be delivered in writing at the office of the insurer from which the policy has been issued.

### Claims

- 2 The employer shall give notice to the insurer of any personal injury to a worker as soon as practicable after information as to the happening of the injury, or of any incapacity arising from it, comes to the knowledge of the employer or of the employer's representative for the time being, and shall forward to the insurer every written notice of claim or proceedings, and all information as to any verbal notice of claim or proceedings.

### Employer not to make admissions

- 3 The employer shall not, without the written authority of the insurer, incur any expense of litigation, or make any payment, settlement, or admission of liability in respect of any injury to or claim made by any worker.

### Defence of proceedings

- 4 The insurer shall in respect of anything indemnified under this policy, including the bringing, defending, enforcing or settling of

Clause Subrogation

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legal proceedings for the benefit of the insurer, be entitled to use the name of the employer. The employer shall give all necessary information and assistance, and forward all documents to enable the insurer to settle or resist any claim as the insurer may think fit.

### **Subrogation**

- 5 The insurer shall be entitled to use the name of the employer in any proceedings to enforce, for the benefit of the insurer, any order made for costs or otherwise, and shall have the right of subrogation, in respect of all rights which the employer may have against any person or persons who may be responsible to the employer or otherwise in respect of any claim for any injury covered by this policy, and the employer shall as and when required execute any necessary documents for the purpose of vesting such rights in the insurer.

### **Precautions**

- 6 The employer shall take all reasonable precautions to prevent injuries.

### **Injuries**

- 7 So far as reasonably practicable, no alteration or repair shall, without the consent of the insurer, be made in any ways, works, machinery, or plant after any injury to a worker shall have occurred in connection therewith until the insurer shall have had an opportunity of examining the same.

### **Inspection**

- 8 The insurer shall have the right and opportunity at all reasonable times to inspect the plant, works, machinery and appliances used in the employer's business.

## **Premium**

- 9 The first and every subsequent premium that may be accepted shall be regulated by the amount of all wages, salaries and other forms of remuneration paid or allowed to workers during each period of indemnity.

## **Wages books must be kept**

- 10 The name and earnings of every worker shall be entered regularly in a proper wages book, so that a record may exist of such workers as are entitled to call upon the employer for compensation.

## **Adjustment of premium**

- 11 The employer shall at all times allow any officer duly authorised by the insurer to inspect the wages book, and shall supply the insurer with—
- (a) a certificate from a registered auditor stating the total amount of wages paid to workers; and
  - (b) a statutory declaration setting out:
    - (i) the determined categories of workers employed by the employer; and
    - (ii) the total amount of wages paid in respect of each of those categories of workers;

during any period of indemnity within 30 days from the expiry of such period of indemnity, and if the total amount shall differ from the amount on which premium has been paid, the difference in premium shall be met by a further proportionate payment to the insurer, or by a refund by the insurer, as the case may be, subject always to the retention by the insurer of the minimum premium stated in the proposal.

### **Assignment**

- 12 No assignment of interest under this policy shall bind the insurer unless the written consent of the insurer is endorsed hereon.

### **Cancellation of policy**

- 13 The insurer may at any time, by giving written notice to the employer, cancel this policy. The notice of cancellation shall be posted to the employer at the withinmentioned address, and the cancellation of the policy shall be effected on the expiration of seven clear days from the date of posting the notice. Notwithstanding the cancellation of the policy, the employer shall supply the insurer with—

- (a) a certificate from a registered auditor stating the total amount of wages paid to workers; and
- (b) a statutory declaration setting out—
  - (i) the determined categories of workers; and
  - (ii) the total amount of wages paid in respect of each of those categories of workers;

during the period of indemnity prior to the time of the cancellation, and the premium for the period of insurance prior to cancellation shall be adjusted on a pro rata basis in the manner provided by condition 11 of this policy.

### **No waiver of conditions**

- 14 No condition or provision of this policy shall be waived or altered unless the consent of the insurer be previously obtained and signified by endorsement hereon, nor shall notice to any agent, nor shall knowledge possessed by any agent, or by any person, be held to effect a waiver or alteration in this contract or any part of it.

## **U** **Schedule 4**      **Rules relating to arbitrations under this Act**

(see s 24)

- 1 For the purpose of settling any matter which, under this Act, is to be settled by arbitration, if any committee, representative of an employer and the employer's workers, exists with power to settle matters under this Act in the case of the employer and workers, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meets to consider the matter, be settled by the arbitration of the committee, or be referred by it, in its discretion, to arbitration as provided in this schedule.
  - 2 If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within 1 month from the date of the claim, the matter shall be settled by the court by arbitration.
  - 3 The *Commercial Arbitration Act 1986* does not apply to an arbitration under this Act, but a committee may, if it thinks fit, submit a question of law for the decision of the court.
  - 4 The court shall, for the purposes of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the court.
  - 5 The court may, if it thinks fit, summon a medical referee to sit with it as an assessor.
  - 6 Rules of court may make provision for the appearance, in any arbitration under this Act, of any party by some other person.
- 6A Subject to this Act, in an arbitration under this Act—
- (a) the procedure of the court is within the discretion of the court;

**Schedule 4** Rules relating to arbitrations under this Act  
**Conditions** 1A In this policy—

Clause No waiver of conditions

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- (b) the court or the committee is not bound to act in a formal manner and is not bound by rules of evidence but may inform itself on any matter in such manner as it thinks fit; and
- (c) the court or committee shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.

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

- 7 (1) A committee or the court shall not award the costs of, or incidental to, an arbitration or any connected proceedings against a person claiming compensation in good faith in that arbitration or those proceedings.
  - (2) The costs of, and incidental to, an arbitration or any connected proceedings—
    - (a) shall not exceed the limit prescribed by rules of court; and
    - (b) shall be taxed in the manner prescribed by those rules.
  - (3) The court may review the taxation referred to in clause (2) (b).
- 9 Where an agreement has been made before ascertainment of compensation between a worker and his or her employer for payment of a lump sum by way of compromise and satisfaction of all claims, or the amount of compensation has been ascertained, or any weekly payment varied or terminated, or any other matter decided, under this Act, either by a committee or by agreement, a memorandum thereof may be sent, in the manner (if any) prescribed by rules of court, by the committee, or by any party interested, to the registrar of the court, who shall, subject to those rules, on being satisfied as to its genuineness, record the memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a judgment of the court:

Provided that—

- (a) no such memorandum shall be recorded before 7 days after the despatch by the registrar of notice to the parties interested; and
- (b) where a worker seeks to record a memorandum of agreement made with his or her employer for the payment of compensation, and the employer, in accordance with rules of court, proves that the worker has in fact returned to work and is earning the same wages as he or she did before the injury, and objects to the recording of the memorandum, the memorandum shall only be recorded, if at all, on such terms as the court, under the circumstances, thinks just; and
- (c) the court may at any time rectify its register; and
- (d) where it appears to the registrar of the court, on any information which the registrar considers sufficient, that an agreement made before ascertainment of compensation between a worker and the worker's employer for payment of a lump sum by way of compromise in satisfaction of all claims or an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, the registrar may refuse to record the memorandum of the agreement sent to him or her for registration, and refer the matter to the court, which shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just; and
- (e) the court may, within six months after a memorandum of an agreement as to compromise of claims or the redemption of a weekly payment by a lump sum or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register,

**Schedule 4** Rules relating to arbitrations under this Act  
**Conditions** 1A In this policy—

Clause No waiver of conditions

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order that the record be removed from the register on proof to its satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances it thinks just.

- 10 An agreement as to the redemption of a weekly payment by a lump sum, if not registered in accordance with this Act, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, the person proves that the failure to register was not due to any neglect or default on the person's part.
- 11 The duty of the court under this Act shall, subject to rules of court, be part of the duties of the court, and the officers of the court shall act accordingly.
- 12 No court fee, except such as may be prescribed under schedule 1, clause 11, shall be payable by any party in respect of any proceedings by or against a worker under this Act in the court prior to the award..
- 13 Any sum awarded as compensation shall, unless paid into court, be paid on the receipt of the person to whom it is payable under any agreement or award, and the legal practitioner or agent of a person claiming compensation under this Act shall not be entitled to recover from the person any costs in respect of any proceedings in an arbitration under this Act or to claim a lien in respect of those costs on, or deduct those costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee or the court, on an application made either by the person



claiming compensation, or by the person's legal practitioner or agent, to determine the amount of costs to be paid to the legal practitioner or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

- 14 A committee or the court may, subject to regulations made under this Act, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.
- 15 The Minister may, by order, either unconditionally or subject to such conditions or modifications as he or she thinks fit, confer on any committee representative of an employer and the employer's workers, in respect of any matter in which the committee acts as an arbitrator, or which it settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on the court, and may by the order provide how and to whom compensation money is to be paid in cases where, but for the order, the money would require to be paid into court, and the order may exclude from the operation of clause 9 (d) and (e) agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as appear to the Minister to be necessary or proper for the purposes of the order.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

### 3 Legislation history

The *Workers Compensation Act 1951* was originally the *Workmen's Compensation Ordinance 1951*. It became an ACT Act on self-government (11 May 1989) and was renamed as the *Workers' Compensation Act 1951* by the *Workers' Compensation (Amendment) Act 1991* No 105. It was later renamed as the *Workers Compensation Act 1951* under the *Legislation Act 2001* (see also Act 2001 No 81 s 5).

#### Legislation before self-government

##### **Workmen's Compensation Act 1951 No 2**

notified 21 March 1951  
commenced 21 March 1951

as amended by

##### **Workmen's Compensation Ordinance 1952 No 4**

notified 1 May 1952  
commenced 1 May 1952 (Cwlth Gaz 1952 p 2417)

##### **Workmen's Compensation Ordinance 1954 No 12**

notified 3 June 1954  
commenced 3 June 1954

##### **Workmen's Compensation Ordinance 1956 No 1**

notified 1 March 1956  
commenced 1 March 1956

##### **Workmen's Compensation Ordinance 1959 No 12**

notified 17 September 1959  
commenced 17 September 1959

##### **Workmen's Compensation Ordinance (No 2) 1959 No 20**

notified 23 December 1959  
commenced 23 December 1959

##### **Ordinances Revision Ordinance 1959 No 21**

notified 23 December 1959  
commenced 31 December 1959

##### **Workmen's Compensation Ordinance 1961 No 8**

notified 1 June 1961  
commenced 1 June 1961

## Endnotes

3 Legislation history

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**Workmen's Compensation Ordinance 1962 No 10**

notified 6 September 1962  
commenced 6 September 1962

**Workmen's Compensation Ordinance 1965 No 6**

notified 13 May 1965  
commenced 10 June 1965

**Workmen's Compensation Ordinance 1967 No 44**

notified 14 December 1967  
commenced 14 December 1967

**Workmen's Compensation Ordinance 1968 No 19**

notified 3 October 1968  
commenced 3 October 1968

**Workmen's Compensation Ordinance 1969 No 7**

notified 29 May 1969  
commenced 29 May 1969

**Workmen's Compensation Ordinance (No 2) 1969 No 13**

notified 24 July 1969  
commenced 24 July 1969

**Workmen's Compensation Ordinance (No 3) 1969 No 18**

notified 28 August 1969  
commenced 1 September 1969

**Workmen's Compensation Ordinance 1970 No 26**

notified 9 July 1970  
commenced 20 July 1970 (Cwlth Gaz 1970 p 4716)

**Workmen's Compensation Ordinance 1971 No 15 (as amended by 1978 No 47)**

notified 1 July 1971  
commenced 1 July 1971

**Workmen's Compensation Ordinance 1972 No 35**

notified 2 November 1972  
commenced 2 November 1972

**Workmen's Compensation Ordinance (No 2) 1972 No 38**

notified 23 November 1972  
commenced 23 November 1972

**Workmen's Compensation Ordinance 1973 No 11**

notified 5 April 1973  
commenced 5 April 1973

**Workmen's Compensation Ordinance 1974 No 34**

notified 25 September 1974  
commenced 25 September 1974

**Workmen's Compensation Ordinance 1975 No 11**

notified 1 May 1975  
commenced 1 May 1975

**Workmen's Compensation (Amendment) Ordinance 1978 No 15 (as amended by 1978 No 47)**

notified 8 June 1978  
commenced 8 June 1978

**Ordinances Revision Ordinance 1978 No 46**

notified 28 December 1978  
commenced 28 December 1978

**Workmen's Compensation (Amendment) Ordinance (No 2) 1978 No 47 (as amended by 1979 No 15)**

notified 28 December 1978  
commenced 28 December 1978

**Workmen's Compensation (Amendment) Ordinance 1979 No 15**

notified 29 June 1979  
commenced 29 June 1979

**Workmen's Compensation (Amendment) Ordinance 1980 No 29**

notified 11 September 1980  
commenced 11 September 1980

**Workmen's Compensation (Amendment) Ordinance 1981 No 4**

notified 4 March 1981  
commenced 4 March 1981

**Workmen's Compensation (Amendment) Ordinance 1982 No 103**

notified 31 December 1982  
commenced 1 July 1982

## Endnotes

3 Legislation history

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**Workmen's Compensation (Amendment) Ordinance (No 2) 1982  
No 104**

notified 31 December 1982  
commenced 1 January 1989

**Workmen's Compensation (Amendment) Ordinance 1983 No 69 (as  
amended by 1984 No 5)**

notified 30 December 1983  
commenced 30 December 1983 (Cwlth Gaz 1983 No S349)

**Court of Petty Sessions (Civil Jurisdiction) Ordinance 1984 No 76**

notified 19 December 1984  
commenced 19 December 1984

**Public Trustee (Miscellaneous Amendments) Ordinance 1985 No 9**

notified 8 March 1985  
commenced 28 October 1985 (Cwlth Gaz 1985 No G42 p 3902)

**Magistrates Court Ordinance 1985 No 67**

notified 19 December 1985  
commenced 1 February 1986 (Cwlth Gaz 1986 No G3 p 265)

**Commercial Arbitration Ordinance 1986 No 84**

notified 22 December 1986  
commenced 2 March 1987 (Cwlth Gaz 1987 No G6 p 509)

**Workmen's Compensation (Amendment) Ordinance 1987 No 10**

notified 2 April 1987  
commenced 2 April 1987

**Workmen's Compensation (Amendment) Ordinance (No 2) 1987  
No 24**

notified 15 June 1987  
commenced 15 June 1987

**Self-Government (Consequential Amendments) Ordinance 1989  
No 38**

notified 10 May 1989  
s 1, s 2 commenced 10 May 1989  
remainder commenced 11 May 1989 (s 2 (2) and Cwlth Gaz 1989 No  
S164)

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**Legislation after self-government****Magistrates and Coroner's Courts (Registrar) Act 1991 No 44**

notified 20 September 1991

s 1, s 2 commenced 20 September 1991

remainder commenced 25 September 1991 (Gaz 1991 No S103)

**Workers' Compensation (Amendment) Act 1991 No 105**

notified 15 January 1992 (Gaz 1992 No S3)

ss 1-3 commenced 15 January 1992 (s 2 (1))

remainder commenced 22 January 1992 (s 2 (2) and Gaz 1992 No S9)

**Workers' Compensation (Amendment) Act 1993 No 19**

notified 9 March 1993

commenced 9 March 1993

**Administrative Appeals (Consequential Amendments) Act 1994 No 60**

notified 11 October 1994

s 1, s 2 commenced 11 October 1994

remainder commenced 14 Nov 1994 (s 2 (2) and Gaz 1994 No S250)

**Workers' Compensation (Amendment) Act 1994 No 68**

notified 1 November 1994

s 1, s 2 commenced 1 November 1994

s 5 (in pt) 25 November 1994 (Gaz 1994 No S286)

remainder (s 3, s 4, s 5 (in pt) and ss 6-9) commenced 1 January 1995  
(Gaz 1995 No S286)

**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97**

notified 15 December 1994

s 1, s 2 commenced 15 December 1994

remainder commenced 15 December 1994 (Gaz 1994 No S293)

**Statute Law Revision Act 1995 No 46**

notified 18 December 1995

commenced 18 December 1995

**Workers' Compensation (Amendment) Act 1995 No 52**

notified 20 December 1995

commenced 20 December 1995

**Workers' Compensation (Amendment) Act 1996 No 13**

notified 1 May 1996

## Endnotes

3 Legislation history

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commenced 1 May 1996

### **Workers' Compensation (Amendment) Act 1997 No 27**

notified 16 July 1997

ss 1-3 commenced 16 July 1997

remainder commenced 13 January 1998 (Gaz 1997 No S19)

### **Workers' Compensation (Amendment) Act (No 2) 1997 No 66**

notified 9 October 1997

ss 1-3 commenced 9 October 1997

remainder commenced 17 December 1997 (Gaz 1997 No S414)

### **Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 S380)

s 1, s 2 commenced 1 December 1997 (s 2 (1))

sch 1 commenced 1 June 1998 (s 2 (2))

### **Workers' Compensation (Amendment) Act 1998 No 31**

notified 11 September 1998

commenced 11 September 1998

### **Statute Law Revision (Penalties) Act 1998 No 54**

notified 27 November 1998

s 1, s 2 commenced 27 Nov 1998

remainder commenced 9 December 1998 (Gaz 1998 No 49)

### **Law Reform (Miscellaneous Provisions) Act 1999 No 66**

notified 10 November 1999

commenced 10 November 1999

### **Occupational Health and Safety (Amendment) Act (No 2) 1999 No 82**

notified 23 December 1999

ss 1-3 commenced 23 December 1999

remainder commenced 23 June 2000

### **Long Service Leave (Cleaning, Building and Property Services) Act 1999 No 85 s 70**

notified 23 December 1999 (Gaz 1999 No S65)

pts 1 and 2 (ss 1-28) commenced 23 December 1999 (s 2 (1))

s 70 commenced 23 June 2000 (s 2 (3))



**Workers' Compensation Amendment Act 2000 No 74**

notified 21 December 2000  
 commenced 21 December 2000

**Statute Law Amendment Act 2000 No 80**

notified 21 December 2000  
 commenced 21 December 2000

**Legislation (Consequential Amendments) Act 2001 No 44 pt 418**

notified 26 July 2001 (Gaz 2001 No 30)  
 s 1, s 2 commenced 26 July 2001 (IA s 10B)  
 pt 418 commenced 12 Sept 2001 (s 2 and Gaz 2001 No S65)

**Workers Compensation Amendment Act 2001 No 81**

notified 28 September 2001  
 s 1, s 2 commenced 28 Sept 2001 (LA s 75)  
 new s 8OA as ins by s 11 and sch 2 commenced 28 September 2001  
 (s 2 (2))  
remainder commences 1 July 2002 (s 2 (1))

**4 Amendment history****Title**

am 1983 No 69; 1991 No 105 s 4

**Preliminary**

pt 1 hdg ins 1991 No 105 s 5  
sub as ch 1 hdg 2001 No 81 s 4 (see notes below)

**Entitlement to compensation**

pt 2 hdg ins 1991 No 105 s 7  
sub as ch 4 hdg 2001 No 81 s 6 (see notes below)

**Occupational rehabilitation**

pt 2A hdg ins 1994 No 68  
sub as ch 7 hdg 2001 No 81 s 19 (see notes below)

**Insurance**

pt 3 hdg ins 1991 No 105 s 11  
renum as ch 8 hdg 2001 No 81 amdt 1.17 (see notes below)

**Compensation and common law remedies**

pt 4 hdg ins 1991 No 105 s 17  
renum as ch 9 hdg 2001 No 81 amdt 1.31 (see notes below)

**Inspection**

pt 5 hdg ins 1991 No 105 s 18  
renum as ch 10 hdg 2001 No 81 amdt 1.38 (see notes below)

## Endnotes

4 Amendment history

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### **Procedure for payment of compensation**

pt 6 hdg ins 1991 No 105 s 18  
renum as ch 11 hdg 2001 No 81 amdt 1.42 (see notes below)

### **Weekly compensation payments**

pt 6A hdg ins 1994 No 68  
om 2001 No 81 amdt 1.45

### **On-the-spot fines**

pt 6B hdg ins 1997 No 66  
renum as ch 12 hdg 2001 No 81 amdt 1.46 (see notes below)

### **Miscellaneous**

pt 7 hdg reloc as ch 14 hdg 2001 No 81 amdt 1.50 (see notes below)

### **Transitional**

pt 8 hdg ins 2000 No 80 amdt 3.40  
om 2001 No 81 s 1

### **Preliminary**

ch 1 hdg (prev pt 1 hdg) ins 1991 No 105 s 5  
sub as ch 1 hdg 2001 No 81 s 4

### **Name of Act**

s 1 sub 1991 No 105 s 5  
sub 2001 No 81 s 5

### **Interpretation generally**

ch 2 hdg ins 2001 No 81 s 5

### **Dictionary**

s 1A ins 2001 No 81 s 5

### **Notes**

s 2 orig s 2 om 2001 No 44 amdt 1.4351  
ins 2001 No 81 s 5  
s 2 (2) and section heading notes exp 1 July 2004 (s 2 (2))

### **Meaning of *injury***

s 2A ins 2001 No 81 s 5

### **Meaning of *employer***

s 3 orig s 3 om 1978 No 46  
ins 2001 No 81 s 5

### **Meaning of *totally incapacitated***

s 3A ins 2001 No 81 s 5

### **Meaning of *partially incapacitated***

s 4 orig s 4 om 1959 No 21  
sub 2001 No 81 s 5

### **Meaning of *worker***

ch 3 hdg ins 2001 No 81 s 5

**Who is a worker?**

s 4A [ins 2001 No 81 s 5](#)

**Who is not a worker?**

s 4B [ins 2001 No 81 s 5](#)

**Casuals not employed for trade or business**

s 4C [ins 2001 No 81 s 5](#)

**Regular contractors and casuals**

s 4D [ins 2001 No 81 s 5](#)

**Labour hire arrangements**

s 5 [orig s 5 om 1959 No 21](#)  
[ins 2001 No 81 s 5](#)

**Subcontracting**

s 5AA [\(prev s 14\) am 1967 No 44; 1991 No 105; 2001 No 81 amdt 2.5](#)  
[reloc as s 5AA 2001 No 81 amdt 1.15](#)

**Trainees**

s 5A [ins 2001 No 81 s 5](#)

**Outworkers**

s 5B [ins 2001 No 81 s 5](#)

**Timber contractors**

s 5C [ins 2001 No 81 s 5](#)

**Religious workers**

s 5D [ins 2001 No 81 s 5](#)

**Commercial voluntary workers**

s 5E [ins 2001 No 81 s 5](#)

**Public interest voluntary workers**

s 5F [ins 2001 No 81 s 5](#)

**Entitlement to compensation**

ch 4 hdg [\(prev pt 2 hdg\) ins 1991 No 105 s 7](#)  
[sub as ch 4 hdg 2001 No 81 s 6](#)

**Important concepts**

pt 4.1 hdg [ins 2001 No 81 s 7](#)

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

s 5G [ins 2001 No 81 s 7](#)

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

s 5H [ins 2001 No 81 s 7](#)

**Working out average pre-incapacity weekly earnings for contractor**

s 5I [ins 2001 No 81 s 7](#)

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

s 5J [ins 2001 No 81 s 7](#)

## Endnotes

4 Amendment history

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### **Working out average pre-incapacity weekly hours for contractor**

s 5K [ins 2001 No 81 s 7](#)

### **Overtime—hours and wages**

s 5L [ins 2001 No 81 s 7](#)

### **Gradual onset of incapacity**

s 5M [ins 2001 No 81 s 7](#)

### **Compensation for death or incapacity through disease**

s 5N [\(prev s 9\) sub 1983 No 69](#)  
[am 1991 No 105; 2001 No 81 s 12](#)  
[reloc as s 5N 2001 No 81 amdt 1.12](#)

### **Employment-related diseases**

s 5O [\(prev s 9A\) ins 1983 No 69](#)  
[am 1991 No 105](#)  
[reloc as s 5O 2001 No 81 amdt 1.14](#)

### **Compensation for disease**

s 5P [\(prev s 9B\) ins 1983 No 69](#)  
[am 1991 No 105; 2001 No 81 s 13, s 14](#)  
[reloc as s 5P 2001 No 81 amdt 1.14](#)

### **Interpretation**

s 6 [am 1952 No 4; 1954 No 12; 1956 No 1; 1959 No 12; 1959 No 21; 1962 No 10; 1965 No 6; 1967 No 44; 1969 No 18; 1973 No 11; 1975 No 11; 1978 No 15; 1978 No 47; 1979 No 15; 1981 No 4; 1982 No 104; 1983 No 69; 1985 No 67; 1987 No 24; 1989 No 38; 1991 No 105; 1994 No 60; 1994 No 68; 1994 No 97; 1995 No 46; 1995 No 52; 1997 No 27; 1997 No 66; 2001 No 44 amdts 1.4352-1.4354, 2001 No 81 \[amdts 1.1-1.4\]\(#\), \[amdt 2.1\]\(#\), \[amdt 2.2\]\(#\)](#)  
[defs reloc to dict 2001 No 81 amdt 1.5](#)  
[om 2001 No 81 amdt 1.6](#)

### **Religious workers**

s 6A [ins 1991 No 105; am 2001 No 44 amdts 1.4355-1.4357](#)  
[om 2001 No 81 amdt 1.7](#)

### **Determined categories of workers**

s 6B [ins 1991 No 105; am 2001 No 44 amdt 1.4358, amdt 1.4359](#)  
[om 2001 No 81 amdt 1.7](#)

### **Compensation for personal injury**

pt 4.2 [ins 2001 No 81 s 8](#)

### **General entitlement to compensation for personal injury**

s 6C [\(prev s 7\) am 1983 No 69 \(as am by 1984 No 5\); 1991 No 5](#)  
[sub as s 6C 2001 No 81 s 8](#)

### **Amounts of compensation under Act cumulative**

s 6D [ins 2001 No 81 s 8](#)

**Payments to people with legal disabilities**s 6E [ins 2001 No 81 s 8](#)**Compensation for personal injury**s 7 [reloc as s 6C 2001 No 81 s 8](#)**Compensation limited to Territory workers**s 7A [ins 1997 No 27](#)  
[am 2001 No 81 s 9, amdts 1.8-1.10, amdt 2.3](#)**Injury outside Australia**s 7B [ins 1997 No 27](#)  
[sub 2001 No 81 amdt 1.11](#)**When is a worker taken to be totally incapacitated?**s 7C [ins 1997 No 66](#)  
[sub 2001 No 81 amdt 2.4](#)**Journey claims**s 8 [am 1952 No 4; 1968 No 16; 1983 No 69; 1991 No 105](#)  
[sub 2001 No 81 s 10](#)**Weekly compensation**pt 4.3 hdg [ins 2001 No 81 s 11](#)**What if the worker is dead?**s 8A [ins 2001 No 81 s 11](#)**When do weekly compensation payments begin?**s 8B [ins 2001 No 81 s 11](#)**Totally incapacitated workers**s 8C [ins 2001 No 81 s 11](#)**Partially incapacitated workers up to 26 weeks after incapacity date**s 8D [ins 2001 No 81 s 11](#)**Partially incapacitated workers after 26 weeks after incapacity date**s 8E [ins 2001 No 81 s 11](#)**Stopping of payments for partial incapacity**s 8F [ins 2001 No 81 s 11](#)**Effect on payment period of loss of entitlement to weekly compensation**s 8G [ins 2001 No 81 s 11](#)**Living outside Australia**s 8H [ins 2001 No 81 s 11](#)**Effect of living outside Australia if compensation still payable**s 8I [ins 2001 No 81 s 11](#)**Effect of payment of weekly compensation on other benefits etc**s 8J [ins 2001 No 81 s 11](#)

## Endnotes

4 Amendment history

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**No assignment etc of weekly compensation**

s 8K [ins 2001 No 81 s 11](#)

**Compensation for permanent injuries**

pt 4.4 hdg [ins 2001 No 81 s 11](#)

**Meaning of loss**

s 8L [ins 2001 No 81 s 11](#)

**Meaning of single loss amount**

s 8M [ins 2001 No 81 s 11](#)

**Meaning of maximum loss amount**

s 8N [ins 2001 No 81 s 11](#)

**Compensation for permanent injuries generally**

s 8O [ins 2001 No 81 s 11](#)

**Actuarial review and back, neck and pelvis impairments**

s 8OA [ins 2001 No 81 s11](#)  
[exp 1 July 2002 \(s 8OA \(10\)\)](#)

**Compensation for 2 or more losses**

s 8P [ins 2001 No 81 s 11](#)

**Compensation and left-handedness**

s 8Q [ins 2001 No 81 s 11](#)

**Compensation for combination of items**

s 8R [ins 2001 No 81 s 11](#)

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

s 8S [ins 2001 No 81 s 11](#)

**Compensation for loss of sexual organs**

s 8T [ins 2001 No 81 s 11](#)

**Loss of bowel function**

s 8U [ins 2001 No 81 s 11](#)

**Proportionate loss of use**

s 8V [ins 2001 No 81 s 11](#)

**Special provisions for HIV/AIDS**

s 8W [ins 2001 No 81 s 11](#)

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

s 8X [ins 2001 No 81 s 11](#)

**Further loss and deductible proportions**

s 8Y [ins 2001 No 81 s 11](#)

**Loss of hearing because of age**

s 8Z [ins 2001 No 81 s 11](#)

**No compensation for less than 6% hearing loss**

s 9 [prev s 9 reloc as s 5N 2001 No 81 amdt 1.12](#)  
[ins 2001 No 81 s 11](#)

**Hearing loss—application of s 9**

s 9AA [ins 1993 No 19](#)  
[om 2001 No 81 amdt 1.13](#)

**Presumption to be drawn from refusal to submit to hearing examination**

s 9A [prev s 9A reloc as s 5O 2001 No 81 amdt 1.14](#)  
[ins 2001 No 81 s 11](#)

**Employer's responsibility to pay for hearing loss tests**

s 9B [prev s 9B reloc as s 5P 2001 No 81 amdt 1.14](#)  
[ins 2001 No 81 s 11](#)

**Reimbursement for costs of medical certificate and examination**

s 9C [ins 2001 No 81 s 11](#)

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

s 9D [ins 2001 No 81 s 11](#)

**Compensation for medical treatment, damage and other costs**

pt 4.5 hdg [ins 2001 No 81 s 11](#)

**Application of pt 4.5**

s 9E [ins 2001 No 81 s 11](#)

**Employer liability for medical treatment and damage**

s 9F [ins 2001 No 81 s 11](#)

**Claim for compensation for pt 4.5**

s 9G [ins 2001 No 81 s 11](#)

**Second opinions**

s 9H [ins 2001 No 81 s 11](#)

**Payments for treatment received from hospital**

s 9I [ins 2001 No 81 s 11](#)

**Transport costs other than private car**

s 9J [ins 2001 No 81 s 11](#)

**Working out transport costs for private cars**

s 9K [ins 2001 No 81 s 11](#)

**Costs of accommodation and meals**

s 9L [ins 2001 No 81 s 11](#)

**Compensation for death**

pt 4.6 hdg [ins 2001 No 81 s 11](#)

**Death benefits**

s 10 [orig s 10 am 1968 No 19; 1970 No 26; 1971 No 15; 1972 No 38; 1975 No 11; 1983 No 69; 1991 No 105](#)

## Endnotes

4 Amendment history

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om 2001 No 81 s 15

ins 2001 No 81 s 11

### **Payment into court of lump sum death benefits**

s 10A orig s 10 ins 1983 No 69  
am 1987 No 10; 1991 No 105  
om 2001 No 81 s 15  
ins 2001 No 81 s 11

### **Registration of agreements for compensation**

pt 4.7 hdg ins 2001 No 81 s 11

### **Registration of agreements for compensation**

s 10B orig s 10B ins 1983 No 69  
am 1987 No 10; 1991 No 105  
om 2001 No 81 s 15  
ins 2001 No 81 s 11

### **Effect of registration of agreements**

s 10C orig s 10C ins 1983 No 69  
am 1987 No 10; 1991 No 105  
om 2001 No 81 s 15  
ins 2001 No 81 s 11

### **Cancellation or amendment of registered agreements**

s 10D orig s 10D ins 1983 No 69  
am 1991 No 105  
om 2001 No 81 s 15  
ins 2001 No 81 s 11

### **Exceptions to entitlements to compensation**

pt 4.8 hdg ins 2001 No 81 s 11

### **When is compensation under Act generally not payable?**

s 10E orig s 10E ins 1983 No 69  
om 2001 No 81 s 15  
ins 2001 No 81 s 11

### **No compensation while imprisoned**

s 10F orig s 10F ins 1983 No 69  
am 1991 No 105  
om 2001 No 81 s 15  
ins 2001 No 81 s 11

### **Limitations on entitlement**

s 10G ins 1995 No 52

### **Injury management process**

ch 5 hdg ins 2001 No 81 s 16

### **Object and definitions for chapter 5**

pt 5.1 hdg ins 2001 No 81 s 16



**Object of ch 5**

s 10H [ins 2001 No 81 s 16](#)

**Definitions for ch 5**

s 10I [ins 2001 No 81 s 16](#)

**Meaning of employer and insurer if more than 1**

s 10J [ins 2001 No 81 s 16](#)

**General obligations**

pt 5.2 hdg [ins 2001 No 81 s 16](#)

**Insurer to establish etc injury management program**

s 10K [ins 2001 No 81 s 16](#)

**Insurer to give effect to injury management program**

s 10L [ins 2001 No 81 s 16](#)

**Insurer's obligation of prompt payment**

s 10M [ins 2001 No 81 s 16](#)

**Employer's obligations for injury management programs**

s 10N [ins 2001 No 81 s 16](#)

**Register of injuries**

s 10NA [ins 2001 No 81 s 16](#)

**Obligations on injury**

pt 5.3 hdg [ins 2001 No 81 s 16](#)

**Early notification of workplace injury**

s 10O [ins 2001 No 81 s 16](#)

**Injury notice**

s 10P [ins 2001 No 81 s 16](#)

**What if employer does not give notice of injury within time?**

s 10Q [ins 2001 No 81 s 16](#)

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

s 10R [ins 2001 No 81 s 16](#)

**Obligations in relation to personal injury plans**

pt 5.4 hdg [ins 2001 No 81 s 16](#)

**Personal injury plan for worker with significant injury**

s 10S [ins 2001 No 81 s 16](#)

**Provision of information about personal injury plan**

s 10T [ins 2001 No 81 s 16](#)

**Vocational rehabilitation**

s 10U [ins 2001 No 81 s 16](#)

**Employer's personal injury plan obligations**

s 10V [ins 2001 No 81 s 16](#)

## Endnotes

4 Amendment history

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**Worker's personal injury plan obligations**

s 10W [ins 2001 No 81 s 16](#)

**Nomination of doctor for personal injury plan**

s 10X [ins 2001 No 81 s 16](#)

**Subsequent medical certificates under personal injury plan**

s 10Y [ins 2001 No 81 s 16](#)

**Other obligations**

pt 5.5 hdg [ins 2001 No 81 s 16](#)

**Injured worker's obligation to return to work**

s 10Z [ins 2001 No 81 s 16](#)

**Employer must provide suitable work for full-time, part-time and casual workers**

s 10ZA [ins 2001 No 81 s 16](#)

**Employer must provide suitable work for contract workers**

s 10ZB [ins 2001 No 81 s 16](#)

**Payment of cost of treatment of injured worker**

s 10ZC [ins 2001 No 81 s 16](#)

**Second injury arrangements**

s 10ZD [ins 2001 No 81 s 16](#)

**Workplace rehabilitation**

s 10ZE [ins 2001 No 81 s 16](#)

**Return-to-work guidelines**

s 10ZF [ins 2001 No 81 s 16](#)

**Compliance with chapter 5**

pt 5.6 hdg [ins 2001 No 81 s 16](#)

**Obligation of Minister**

s 10ZG [ins 2001 No 81 s 16](#)

**Compliance by insurers**

s 10ZH [ins 2001 No 81 s 16](#)

**Compliance by workers**

s 10ZI [ins 2001 No 81 s 16](#)

**Unreasonableness in stopping payment**

S 10ZIA [ins 2001 No 81 s 16](#)

**Liability not affected**

s 10ZJ [ins 2001 No 81 s 16](#)

**Claims**

ch 6 hdg [ins 2001 No 81 s 17](#)

**Making claims**

pt 6.1 hdg [ins 2001 No 81 s 17](#)

**Making claim for compensation**

s 11 am 1952 No 4; 1954 No 12; 1959 No 20; 1965 No 6; 1967 No 44; 1971 No 15; 1991 No 105; 1997 No 66  
[sub 2001 No 81 s 17](#)

**Claim for property loss or damage**

s 11A [ins 2001 No 81 s 17](#)

**Medical certificates and claims for compensation**

s 11B [ins 2001 No 81 s 17](#)

**What if no medical certificate with doctor's opinion?**

s 11C [ins 2001 No 81 s 17](#)

**Time for taking proceedings generally**

s 11D [ins 2001 No 81 s 17](#)

**Time for making claim under pt 4.4**

s 11E [ins 2001 No 81 s 17](#)

**When is a claim made?**

s 11F [ins 2001 No 81 s 17](#)

**The notice for an injury**

s 11G [ins 2001 No 81 s 17](#)

**No notice or defective or inaccurate notice**

S 11H [ins 2001 No 81 s 17](#)

**Admissibility of statements by injured workers**

s 11I [ins 2001 No 81 s 17](#)

**Action by employer in relation to claims**

s 11J [ins 2001 No 81 s 17](#)

**Time for accepting or rejecting claims**

pt 6.2 hdg [ins 2001 No 81 s 17](#)

**Meaning of given to the insurer**

s 12 orig s 12 am 1952 No 4; 1954 No 12; 1959 No 20; 1965 No 6; 1967 No 44; 1968 No 19; 1970 No 26; 1971 No 15; 1972 No 38; 1975 No 11; 1983 No 69; 1991 No 105  
om 1997 No 66  
[ins 2001 No 81 s 17](#)

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

s 12A ins 1975 No 11  
am 1982 No 103; 1991 No 105  
[sub 1997 No 66; 2001 No 81 s 17](#)

**Rejecting claims generally**

s 12B ins 1975 No 11

## Endnotes

4 Amendment history

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sub 2001 No 81 s 17

**Rejecting claim within 28 days**

s 12C orig s 12C ins 1975 No 11  
om 1991 No 105  
ins 2001 No 81 s 17

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

s 12D ins 2001 No 81 s 17

**Rejecting claims from 1 year**

s 12E ins 2001 No 81 s 17

**Liability on claims**

pt 6.3 hdg ins 2001 No 81 s 17

**Without prejudice payments**

s 12F ins 2001 No 81 s 17

**Liability on claim not accepted or rejected**

s 12G ins 2001 No 81 s 17

**Order for refund of overpayments of compensation**

s 12H ins 2001 No 81 s 17

**Settlement of claims**

pt 6.4 hdg ins 2001 No 81 s 17

**Contracting out**

s 12I ins 2001 No 81 s 17

**How worker may commute rights**

s 12J ins 2001 No 81 s 17

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

s 12K ins 2001 No 81 s 17

**Contracting out**

s 13 am 1968 No 19; 1991 No 105  
om 2001 No 81 s 17

**Subcontracting**

s 14 reloc as s 5AA 2001 No 81 amdt 1.15

**Medical referees**

s 15 reloc as s 26RD 2001 No 81 amdt 1.16

**Vocational rehabilitation**

ch 7 hdg (prev pt 2A hdg) ins 1994 No 68  
sub as ch 7 hdg 2001 No 81 s 19

**Meaning of approved rehabilitation provider etc**

s 15A ins 1994 No 68  
sub 2001 No 81 s 19

**Meaning of vocational rehabilitation**

s 15B ins 1994 No 68  
sub 2001 No 81 s 19

**Meaning of protocol in ch 7 etc**

s 15C ins 1994 No 68  
am 1998 No 54  
sub 2001 No 81 s 19

**Vocational rehabilitation**

s 15D ins 1994 No 68  
am 1998 No 54  
sub 2001 No 81 s 19

**False representation of approval**

s 15E ins 1994 No 68  
am 1998 No 54  
sub 2001 No 81 s 19

**Approval of protocol**

s 15F ins 1994 No 68  
am 1996 No 13; 2001 No 44 amdt 1.4360, amdt 1.4361; R7 LA  
(see amdt 1.4362)  
om 2001 No 81 s 19

**Disallowance**

s 15G ins 1994 No 68  
om 2001 No 44 amdt 1.4363

**Publication**

s 15H ins 1994 No 68  
am 2001 No 44 amdt 1.4364  
om 2001 No 81 s 19

**Insurance**

ch 8 hdg (prev pt 3 hdg) ins 1991 No 105  
renum as ch 8 hdg 2001 No 81 amdt 1.17

**Meaning of compulsory insurance policy**

s 16 am 1967 No 44; 1987 No 24  
sub 1991 No 105  
am 1997 Nos 27 and 66; 1999 No 85 s 70; 2001 No 44 amdts  
1.4365, amdt 1.4366; R7 LA (see 2001 No 44 amdt 1.4367)  
sub 2001 No 81 s 20

**Approved insurers**

s 16A ins 2001 No 81 s 20

**Effect of revocation or suspension of approval**

s 16B ins 2001 No 81 s 20

**Compulsory insurance—employers**

s 16C ins 2001 No 81 s 20

## Endnotes

4 Amendment history

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### **Liability of executive officers**

s 16D [ins 2001 No 81 s 20](#)

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

s 17 orig s 17 om 1959 No 12  
ins 1991 No 105  
am 2001 No 44 amdt 1.4368, amdt 1.4369  
[sub 2001 No 81 s 20](#)

### **Nominal insurer entitled to triple premiums**

s 17A ins 1991 No 105  
[sub 2001 No 81 s 20](#)

### **Evidence of maintenance of compulsory insurance policy**

s 17B ins 1991 No 105  
am 1997 No 66; 1998 No 54; 2000 No 74 s 3; 2001 No 81  
amdt 2.6, amdt 2.7  
[sub 2001 No 81 s 20](#)

### **Self-insurers**

s 17C ins 1991 No 105  
am 2001 No 44 amdt 1.4370, amdt 1.4371  
[sub 2001 No 81 s 20](#)

### **Compulsory insurance—insurers**

s 17D ins 1991 No 105  
am 1998 No 54  
[sub 2001 No 81 s 20](#)

### **Cancellation**

s 17DA [ins 2001 No 81 s 20](#)

### **Cover notes**

s 17E ins 1997 No 66  
am 2001 No 81 s 21

### **Information for insurers before renewal**

s 18 am 1959 No 12; 1967 No 44; 1969 No 18; 1980 No 29; 1983 No  
69; 1987 No 24  
sub 1991 No 105  
am 1997 No 27; 1998 No 54; 2000 No 74 s 4, s 5; 2001 No 81  
amdt 2.8, amdt 2.9  
[sub 2001 No 81 s 22](#)

### **Information for insurers after end of policy**

s 18AA [ins 2001 No 81 s 22](#)

### **Information for insurers about reporting period**

s 18AB [ins 2001 No 81 s 22](#)

### **Information for insurers after cancellation**

s 18AC [ins 2001 No 81 s 22](#)

**Offence by registered auditor**

s 18AD [ins 2001 No 81 s 22](#)

**Offence in relation to statutory declaration**

s 18AE [ins 2001 No 81 s 22](#)

**Offence to employ etc after 2nd offence**

s 18AF [ins 2001 No 81 s 22](#)

**Provision of information to Minister**

s 18A [ins 1959 No 12](#)  
[am 1967 No 44; 1991 No 105; 1998 No 54; 2001 No 81](#)  
[amdt 1.18](#), [amds 2.10-2.13](#)

**Nominal insurer**

s 18B [ins 1959 No 12](#)  
[am 2001 No 44 amdt 1.4372](#), [amdt 1.4373](#)

**Claims for payment by nominal insurer**

s 18C [ins 1959 No 12](#)  
[am 1969 No 18; 1983 No 69; 1991 No 105; 1997 No 27](#)

**Payments by nominal insurer**

s 18D [ins 1959 No 12](#)  
[sub 1969 No 18](#)  
[am 1983 No 69; 1991 No 105; 2001 No 81 amdt 2.14](#)

**Reopening of agreements and awards**

s 18E [ins 1959 No 12](#)  
[am 1961 No 8; 1969 No 18; 1991 No 105](#)  
[sub 2001 No 81 amdt 2.15](#)  
[am 2001 No 81 amdt 1.19](#)

**Deciding or redeciding claim**

s 18EAA [ins 2001 No 81 amdt 2.15](#)

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

s 18EA [ins 1969 No 18](#)  
[am 1991 No 105; 1998 No 54; 2001 No 81](#) [amdt 1.20](#),  
[amds 2.16-2.18](#)

**Intervention by nominal insurer**

s 18F [ins 1959 No 12](#)  
[am 1967 No 44; 1991 No 105; 1998 No 54](#)  
[sub 2001 No 81 s23](#)

**Nominal insurer may act**

s 18FA [ins 2001 No 81 s 23](#)

**Effects of payment by nominal insurer**

s 18G [ins 1959 No 12](#)  
[am 1969 No 18; 2000 No 74 s 6](#)  
[sub 2001 No 81 s 24](#)

## Endnotes

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### **Funds for payments by nominal insurer**

s 18H ins 1959 No 12  
am 1991 No 105; 1997 No 66; 2001 No 81 amdts 1.21-1.26

### **Information and assistance by employer to nominal insurer**

s 18J ins 1959 No 12  
am 1967 No 44; 1991 No 105; 1998 No 54; 2001 No 81 amdts  
2.19-2.21

### **Proceedings to be in the name of 'The Nominal Insurer'**

s 18K ins 1959 No 12  
am 1991 No 105

### **Inspection of policies**

s 19 am 1967 No 44; 1969 No 18  
om 1991 No 105

### **Premiums—maximum rates**

s 20 am 1967 No 44  
sub 1991 No 105  
am 1998 No 54  
sub 2001 No 81 amdt 1.27

### **Premiums—remuneration for professional sporting activity**

s 20AA ins 1995 No 52  
am 2001 No 81 amdt 1.28

### **Variation of insurance policies**

s 20A ins 1991 No 105  
om 2001 No 81 amdt 1.29

### **Workers rights to information**

s 21 am 1967 No 44; 1969 No 18  
sub 1991 No 105  
am 1997 No 27; 1998 No 54; 2001 No 44 amdt 1.4374-1.4376;  
R7 LA (see amdt 1.4377)  
sub 2001 No 81 amdt 1.30

### **Regulations to allow Minister to authorise people**

s 21AA ins 2001 No 81 s 25

### **Compensation and common law remedies**

ch 9 hdg (prev pt 4 hdg) ins 1991 No 105  
renum as ch 9 hdg 2001 No 81 amdt 1.31

### **Definitions for pt 4**

s 21A hdg ins 1991 No 105  
sub 2001 No 81 amdt 2.22  
s 21A ins 1991 No 105  
am 2001 No 81 amdt 1.32, amdt 2.23, amdt 2.24  
def **compensation** om 2001 No 81 amdt 1.33



**References to person who recovers damage etc**

s 21AB ins 2001 No 81 amdt 2.24

**Payments by nominal insurer**

s 21B ins 1991 No 105  
am 2001 No 81 amdt 1.34, amdt 1.35

**Remedies both against the employer and a stranger**

s 22 am 1952 No 4; 1959 No 12; 1991 No 105; 2001 No 81 amdt 1.36

**Liability arising independently of this Act**

s 23 am 1962 No 10; 1983 No 69; 1991 No 105  
sub 1997 No 27  
am 2001 No 81 amdt 1.36

**Dependants recovering damages and not claiming compensation**

s 23A ins 1991 No 105  
am 2001 No 81 amdt 1.36, amdt 1.37

**Discharge of liability out of payments into court**

s 23B ins 1991 No 105

**Inspection**

ch 10 hdg (prev pt 5 hdg) ins 1991 No 105  
renum as ch 10 hdg 2001 No 81 amdt 1.38

**Definitions for pt 5**

s 23C ins 1991 No 105  
sub 2001 No 81 amdt 2.25  
am 2001 No 81 amdt 1.39, amdt 1.40

**Inspectors**

s 23D ins 1991 No 105  
sub 1994 No 97; 2001 No 81 s 26

**Identity cards**

s 23E ins 1991 No 105  
sub 1994 No 97  
am 1998 No 54  
sub 2001 No 81 s 26

**Provision of information to inspectors**

s 23F ins 1991 No 105  
am 1997 No 27; 1997 No 66; 1998 No 54  
sub 2001 No 81 amdt 1.41

**Entry and inspection of premises**

s 23G ins 1991 No 105  
am 1997 No 66; 1998 No 54; 2001 No 81 amdt 2.26

**Consent to entry and inspection**

s 23H ins 1991 No 105

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### **Search warrants**

s 23I ins 1991 No 105

### **Obstruction**

s 23J ins 2001 No 81 s 27

### **Procedure for payment of compensation**

ch 11 hdg (prev pt 6 hdg) ins 1991 No 105  
renum as ch 11 hdg 2001 No 81 amdt 1.42

### **Arbitration**

s 24 am 1991 No 105; 2001 No 81 amdt 1.43

### **Time for taking proceedings**

s 25 am 1983 No 69; 1991 No 105  
om 2001 No 81 amdt 1.44

### **Admissibility of statements by injured workers**

s 25A ins 1991 No 105  
am 1997 No 96; 2001 No 81 amdt 2.27

### **Appeals**

s 26 am 1959 No 12; 1961 No 8; 1973 No 11; 1984 No 76; 1985 No  
67; 1999 No 66 s 6 sch 3; 2001 No 81 amdt 2.28

### **Notice to employer's insurer**

s 26A ins 1994 No 68  
am 1998 No 54  
om 2001 No 81 amdt 1.45

### **Commencement**

s 26B ins 1994 No 68  
am 1998 No 54  
om 2001 No 81 amdt 1.45

### **Notice by worker**

s 26BA ins 1997 No 66  
om 2001 No 81 amdt 1.45

### **Termination**

s 26C ins 1994 No 68  
om 2001 No 81 amdt 1.45

### **Review of termination**

s 26D ins 1994 No 68  
om 2001 No 81 amdt 1.45

### **Court-approved termination**

s26E ins 1994 No 68  
om 2001 No 81 amdt 1.45

### **Notice to nominal insurer**

s 26F ins 1994 No 68  
am 1998 No 54

om 2001 No 81 amdt 1.45

**On-the-spot fines**

ch 12 hdg (prev pt 6B hdg) ins 1997 No 66  
renum as ch 12 hdg 2001 No 81 amdt 1.46

**Definitions for ch 12**

s 26G ins 1997 No 66  
am 2001 No 81 amdt 1.47  
def **commissioner** ins 1999 No 82 sch  
def **determined fee** sub 2001 No 44 amdt 1.4378  
def **on-the-spot fine** sub 2001 No 81 amdt 1.48  
def **Registrar** om 1999 No 82 sch

**Infringement notices**

s 26H ins 1997 No 66  
am 1999 No 82 s 16 sch; 2001 No 44 amdt 1.4379, amdt  
1.4380; 2001 No 81 amdt 1.49

**Final infringement notices**

s 26J ins 1997 No 66  
am 1999 No 82 sch; 2001 No 44 amdt 1.4381, No 81 amdt 1.49

**Discharge of liability for prescribed offences**

s 26K ins 1997 No 66

**Application for withdrawal of infringement notice**

s26L ins 1997 No 66  
am 1999 No 82 s 16 sch; 2001 No 81 amdt 1.49

**Withdrawal of infringement notices**

s 26M ins 1997 No 66  
am 1999 No 82 sch

**Prosecution of prescribed offences**

s 26N ins 1997 No 66  
am 1999 No 82 sch

**Non-antecedent value of infringement notice offences**

s 26P ins 1997 No 66  
am 2001 No 81 amdt 1.49

**Service of notices**

s 26Q ins 1997 No 66  
am 2001 No 81 amdt 1.49, amdt 2.29

**Evidence**

s 26R ins 1997 No 66  
am 1999 No 82 sch; 2001 No 81 amdt 1.49

**Notice and appeals**

ch 13 ins 2001 No 81 s 28

## Endnotes

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### **Notice of reviewable decisions to be given to affected people**

s 26RA [ins 2001 No 81 s 28](#)

### **Review by administrative appeals tribunal of reviewable decisions**

s 26RB [ins 2001 No 81 s 28](#)

### **Miscellaneous**

ch 14 hdg [\(prev pt 7hdg\) renum as ch 14 hdg 2001 No 81 amdt 1.50](#)

### **Confidentiality**

s26RC [ins 2001 No 81 s 29](#)

### **Medical referees**

s 26RD [\(prev s 15\) am 1969 No 13; 1991 No 105](#)  
[sub 2001 No 81 s 18](#)  
[reloc as s 26RD 2001 No 81 amdt 1.16](#)

### **Time for beginning prosecutions**

s 26S [ins 1997 No 66](#)  
[sub 2001 No 81 s 29](#)  
[s 26S \(3\) and \(4\) exp 1 July 2004 \(s 26S \(4\)\)](#)

### **False claims etc**

s 26T [ins 2001 No 81 s 29](#)

### **Acts and omissions of representatives**

s 26U [ins 2001 No 81 s 29](#)

### **Criminal liability of officers of corporation**

s 27 [orig s 27 om 1989 No 38](#)  
[ins 1991 No 105](#)  
[sub 2001 No 81 s 29](#)

### **Minister must take advice**

s 27A [orig s 27A ins 1991 No 105](#)  
[om 1998 No 54](#)  
[ins 2001 No 81 s 29](#)

### **Rules of court**

s 27B [ins 1991 No 105](#)  
[am 1994 No 60; 1995 No 46](#)  
[sub 2001 No 81 s 29](#)

### **Directions about procedure**

s 27C [orig s 27C ins 1991 No 105](#)  
[om 2001 No 44 amdt 1.4382](#)  
[ins 2001 No 81 s 29](#)

### **References to Workers' Compensation Act**

s 27CA [ins 2001 No 81 s 29](#)

### **Funds for administration of Act**

s 27D [ins 1998 No 31](#)  
[am 2001 No 81 amdts 1.51-1.55](#)

**Determination of fees**

s 28 am 1952 No 4; 1967 No 44; 1969 No 13; 1989 No 38; 1991 No 105; 1994 No 68; 1998 No 54  
sub 2001 No 44 amdt 1.4383

**Approved forms**

s 29 orig s 29 ins 2000 No 80 amdt 3.40  
renum as s 31 2001 No 44 amdt 1.4384  
ins 2001 No 44 amdt 1.4383  
s 29 (4)-(7) exp 12 September 2002 (s 29 (7))

**Regulation-making power**

s 30 ins 2001 No 44 amdt 1.4383  
am 2001 No 81 s 30

**Injuries received before 13 January 1998**

s 31 (prev s 29) ins 2000 No 80 amdt 3.40  
renum s 31 by 2001 No 44 amdt 1.4384  
om 2001 No 81 s 31

**Transitional**

ch 15 hdg ins 2001 No 81 s 32  
exp 1 July 2004 (s 39)

**Definitions for ch 15**

s 32 ins 2001 No 81 s 32  
exp 1 July 2004 (s 39)

**What injuries does this Act apply to?**

s 33 ins 2001 No 81 s 32  
exp 1 July 2004 (s 39)

**What happens to injuries before the commencement of the amendment Act?**

s 34 ins 2001 No 81 s 32  
exp 1 July 2004 (s 39)

**Determined categories of workers**

s 35 ins 2001 No 81 s 32  
exp 1 July 2004 (s 39)

**Approved insurers**

s 36 ins 2001 No 81 s 32  
exp 1 July 2004 (s 39)

**Exempt employers**

s 37 ins 2001 No 81 s 32  
exp 1 July 2004 (s 39)

**Modification of ch 15's operation**

s 38 ins 2001 No 81 s 32  
exp 1 July 2004 (s 39)

## Endnotes

### 4 Amendment history

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#### **Expiry of ch 15**

s 39 [ins 2001 No 81 s 32](#)  
[exp 1 July 2004 \(s 39\)](#)

#### **Compensation for permanent injuries**

sch 1 hdg am 1991 No 105  
[sub 2001 No 81 s 33](#)  
sch 1 am 1952 No 4; 1954 No 12; 1959 No 12; 1959 No 20; 1961 No 8; 1965 No 6; 1967 No 44; 1968 No 19; 1969 No 7; 1970 No 26; 1971 No 15; 1972 No 35; 1972 No 38; 1973 No 11; 1974 No 34; 1975 No 11; 1983 No 69; 1985 No 9; 1987 No 10; 1991 No 44; 1991 No 105; 1993 No 19; 1994 No 68; 1997 No 66  
[sub 2001 No 81 s 33](#)

#### **Schedule 2**

sch 2 hdg am 1991 No 105  
sch 2 sub 1952 No 4; 1954 No 12; 1959 No 20; 1965 No 6; 1967 No 44; 1968 No 19  
am 1997 No 66  
[om 2001 No 81 s 33](#)

#### **Employer's insurance policy**

sch 3 hdg am 1991 No 105  
sch 3 am 1952 No 4; 1967 No 44; 1969 No 18; 1987 No 24; 1989 No 38; 1991 No 105; 1997 Nos 27 and 66  
[om 2001 No 81 s 33](#)

#### **Rules relating to arbitrations under this Act**

sch 4 hdg am 1991 No 105  
sch 4 am 1961 No 8; 1983 No 69; 1986 No 84; 1991 No 44; 1991 No 105  
am 1997 No 96; 2001 No 44 amdt 1.4385, amdt 1.4386  
[om 2001 No 81 s 33](#)

#### **Dictionary**

dict [ins 2001 No 81 s 33](#)  
[def \*\*ABS\*\* ins 2001 No 81 s 33](#)  
[def \*\*approved insurer\*\* ins 2001 No 81 s 33](#)  
[def \*\*approved rehabilitation provider\*\* ins 2001 No 81 s 33](#)  
[def \*\*average pre-incapacity weekly earnings\*\* ins 2001 No 81 s 33](#)  
[def \*\*average pre-incapacity weekly hours\*\* ins 2001 No 81 s 33](#)  
[def \*\*AWE\*\* ins 2001 No 81 s 33](#)  
[def \*\*awe indexed\*\* ins 2001 No 81 s 33](#)  
[def \*\*boilermaker deafness\*\* ins 2001 No 81 s 33](#)  
[def \*\*child\*\* ins 2001 No 81 s 33](#)  
[def \*\*chiropractor\*\* reloc from s 6 \(1\) 2001 No 81 amdt 1.5](#)

def **compensable injury** ins 2001 No 81 s 33  
def **compensation** ins 2001 No 81 s 33  
def **compensation for costs** ins 2001 No 81 s 33  
def **compulsory insurance policy** ins 2001 No 81 s 33  
def **cpi indexed** ins 2001 No 81 s 33  
def **deductible proportion** ins 2001 No 81 s 33  
def **defined offence** reloc from s 6 (1) 2001 No 81  
amdt 1.5  
def **dependant** ins 2001 No 81 s 33  
def **determined categories** ins 2001 No 81 s 33  
def **disease** reloc from s 6 (1) 2001 No 81 amdt 1.5  
def **employer** ins 2001 No 81 s 33  
am R7 LA  
def **executive officer** ins 2001 No 81 s 33  
def **full-time student** ins 2001 No 81 s 33  
def **given** ins 2001 No 81 s 33  
def **incapacity date** ins 2001 No 81 s 33  
def **initial loss** ins 2001 No 81 s 33  
def **injured worker** ins 2001 No 81 s 33  
def **injury** ins 2001 No 81 s 33  
def **injury management** ins 2001 No 81 s 33  
def **injury management program** ins 2001 No 81 s 33  
def **injury notice** ins 2001 No 81 s 33  
def **insurer** ins 2001 No 81 s 33  
def **inspector** reloc from s 6 (1) 2001 No 81 amdt 1.5  
def **loss** ins 2001 No 81 s 33  
def **maximum loss amount** ins 2001 No 81 s 33  
def **medical referee** ins 2001 No 81 s 33  
def **medical treatment** ins 2001 No 81 s 33  
def **member of the family** reloc from s 6 (1) 2001 No  
81 amdt 1.5  
def **nominal insurer** reloc from s 6 (1) 2001 No 81 amdt  
1.5  
def **nominated treating doctor** ins 2001 No 81 s 33  
def **non-business employer** ins 2001 No 81 s 33  
def **osteopath** reloc from s 6 (1) 2001 No 81 amdt 1.5  
def **partially incapacitated** ins 2001 No 81 s 33  
def **payment** ins 2001 No 81 s 33  
def **pension age** ins 2001 No 81 s 33  
def **personal injury plan** ins 2001 No 81 s 33  
def **professional sporting activity** reloc from s 6 (1) 2001  
No 81 amdt 1.5  
def **protocol** ins 2001 No 81 s 33  
def **registered agreement** ins 2001 No 81 s 33  
def **registered auditor** ins 2001 No 81 s 33  
def **return-to-work program** ins 2001 No 81 s 33  
def **reviewable decision** ins 2001 No 81 s 33  
def **rules** ins 2001 No 81 s 33

## Endnotes

### 5 Earlier republications

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def **self-insurer** ins 2001 No 81 s 33  
def **single loss amount** ins 2001 No 81 s 33  
def **speech therapist** reloc from s 6 (1) 2001 No 81  
amdt 1.5  
def **spouse** reloc from s 6 (1) 2001 No 81 amdt 1.5  
def **statutory floor** ins 2001 No 81 s 33  
def **substantial** ins 2001 No 81 s 33  
def **Territory worker** ins 2001 No 81 s 33  
def **therapeutic treatment** reloc from s 6 (1) 2001 No 81  
amdt 1.5  
def **totally incapacitated** ins 2001 No 81 s 33  
def **vocational rehabilitation** ins 2001 No 81 s 33  
def **weekly compensation** ins 2001 No 81 s 33  
def **worker** ins 2001 No 81 s 33  
def **workplace injury** ins 2001 No 81 s 33

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	Act 1991 No 105	31 March 1992
2	Act 1993 No 19	31 January 1994
3	Act 1994 No 97	1 January 1995
4	Act 1996 No 13	31 March 1997
5	Act 1997 No 96	31 January 1998
6	Act 1998 No 54	31 December 1998

## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Workers Compensation Amendment Act 2001 No 81, ss 4-34, sch 1**

### 4 Part 1, heading

*substitute*



## Chapter 1 Preliminary

### 5 Section 1

*substitute*

#### 1 Name of Act

This Act is the *Workers Compensation Act 1951*.

## Chapter 2 Interpretation generally

### 1A Dictionary

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

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

For example, the signpost definition '*injury*—see section 2A (Meaning of *injury*).' means that injury is defined in that section.

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

### 2 Notes

- (1) A note included in this Act is explanatory and is not part of this Act.

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

- (2) In this section:

**note** includes material enclosed in brackets in section headings.

*Note* For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

## Endnotes

6 Uncommenced amendments

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- ACT WCA: *Workers' Compensation Act 1951*, as in force immediately before the commencement of the *Workers Compensation Amendment Act 2001*, s 4.
  - ACT WC Regs: *Workers' Compensation Regulations*, as in force immediately before the commencement of the *Workers Compensation Amendment Act 2001*, s 4.
  - CW WRR: *Workplace Relations Regulations* (Cwlth).
  - NSW WIMWCA: *Workplace Injury Management and Workers Compensation Act 1998* (NSW).
  - NSW WCA: *Workers Compensation Act 1987* (NSW).
- (3) Subsection (2), this subsection, and the material enclosed in brackets in section headings, expire 2 years after this section commences.

### 2A Meaning of *injury* (ACT WCA s 6 (1) and (1A))

- (1) For this Act:

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

- (2) For this section:

*mental injury (including stress)* does not include a mental injury (including stress) completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker.

### 3 Meaning of *employer* (ACT WCA s 6 (1))

For this Act:

*employer* includes—

- (a) an entity; and
- (b) the legal personal representative of a dead employer; and

- 
- (c) if the services of the worker are temporarily lent or let on hire to someone else (the *temporary employer*) by the person (the *original employer*) with whom the worker has entered into a contract of service or apprenticeship—the original employer is, for this Act, taken to continue to be the employer of the worker while the worker is working for the temporary employer.

### **3A Meaning of *totally incapacitated***

For this Act, the injured worker is *totally incapacitated* for work if—

- (a) there is no suitable paid employment reasonably available to the worker that the worker can do because of a functional impairment caused by the injury; or
- (b) the worker is taken, or declared, to be totally incapacitated under section 7C (When is a worker taken to be totally incapacitated?).

### **4 Meaning of *partially incapacitated***

For this Act, the injured worker is *partially incapacitated* for work if, because of a functional impairment caused by the injury, the worker—

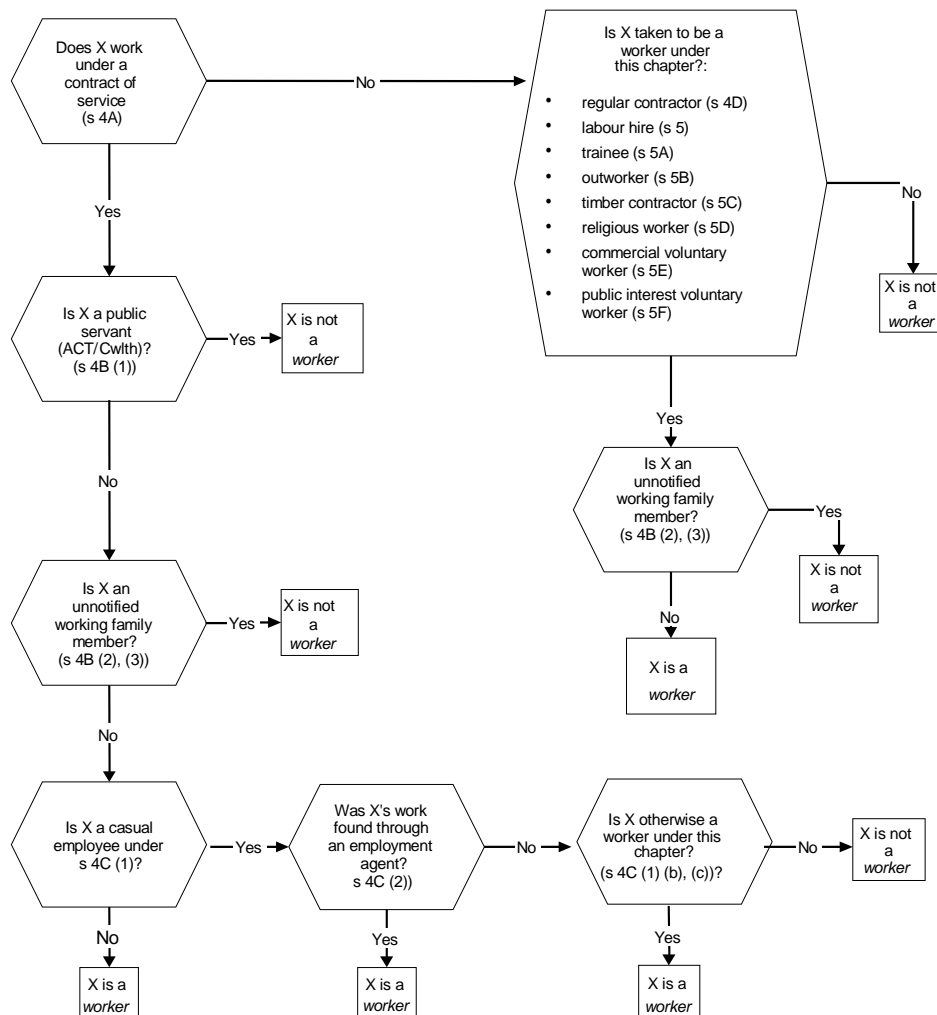
- (a) cannot do all the work the worker could do before the injury; and
- (b) is not totally incapacitated.

## Chapter 3 Meaning of worker

Notes about ch 3

Note 1 Working out who is a worker

The following chart is a guide for working out if a person (X) is a **worker** for this Act.



*Note 2 Payment for work*

Most people who are **workers** under this chapter are employed or engaged under a contract with someone else. At common law, a contract cannot exist unless there is a valuable exchange between the people on both sides of the contract, by which—

- the employee (or contractor) provides his or her labour to the employer (or principal); and
- the employer (or principal), in exchange, provides payment to the employee (or contractor), including non-monetary rewards (eg payment in kind).

The exceptions under this chapter are those who are taken to be **workers** under s 5A (Trainees), s 5D (Religious workers), s 5E (Commercial voluntary workers) and s 5F (Public interest voluntary workers). Trainees and religious workers may or may not be paid for their labour. Voluntary workers (under s 5E and s 5F) are those that are paid only for expenses (if that).

*Note 3 Subcontracting and labour hire (effect of s 5AA)*

The Act applies in a special way to subcontracting arrangements, by which—

- a **worker** is engaged to work for a person who is the **employer** of the worker (under this chapter); and
- the employer has engaged the worker to fulfil a contract the employer has with someone else (in this note, a **principal**) to do work for the principal's trade or business.

Under s 5AA, the principal is liable to pay compensation to the worker if the worker is injured. The principal may, however, recover the compensation paid from the employer.

These situations may be complicated by the involvement of labour hirers, who may in some circumstances be taken to be the employer of workers engaged to do work for a principal (see s 5). Here are 3 illustrations of different subcontracting arrangements:

*Arrangement 1 No labour hirer*

A bricklayer's labourer (the **worker**) is employed by a bricklayer (the **employer**) to assist the bricklayer to fulfil a contract between the bricklayer and a builder (the **principal**).

The bricklayer is the labourer's employer.

## Endnotes

6 Uncommenced amendments

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### *Arrangement 2 Labour hirer as employer*

A cleaner (the **worker**) is engaged by a labour hirer (the **employer**) to fulfil a contract between the labour hirer and the owner of a retail store (the **principal**) for the cleaning of the store. The labour hirer is taken (under s 5) to be the employer of the cleaner, because the cleaner has no contractual relationship with the owner of the store.

The labour hirer is the cleaner's employer.

### *Arrangement 3 Labour hirer as employment agent*

A keyboard operator (the **worker**) is employed by an information technology consultant (the **employer**) to fulfil a contract between the consultant and a government department (the **principal**). The consultant recruits the operator through a labour hirer acting as an employment agent.

The consultant is the operator's employer.

Under all of these arrangements, the worker may claim compensation from either the employer or the principal (see s 14 (2) and (4)). If the principal pays compensation to the worker, the principal may claim repayment from the employer (see s 14 (3)). But in the 3rd arrangement (*Labour hirer as employment agent*), the worker may not claim compensation from the labour hirer, and the principal may not seek repayment of compensation from the labour hirer.

## **4A Who is a worker?** (ACT WCA s 6 (1) (def of **worker**), (7), s 6B)

- (1) For this Act (subject to this chapter):

**worker** means an individual who has entered into or works under a contract of service with an employer, whether the contract is express or implied, oral or written.

- (2) A reference in this Act to a **worker** after the date of an injury includes a reference to a former worker.
- (3) The Minister may, in writing, determine categories of workers for the following provisions:
- section 18 (b) (i) (Information for insurers before renewal)

- section 18AA (b) (i) (Information for insurers after end of policy)
- section 18AB (1) (a) (Information for insurers about reporting period)
- section 23F (1) (b) (i) (Provision of information to inspectors).

(4) A determination is a notifiable instrument.

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

**4B Who is not a *worker*?** (ACT WCA s 6 (1) (def of *worker*), (2))

(1) For this Act (despite anything else in this chapter), *worker* does not include—

- (a) a public servant; or
- (b) an employee within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth).

(2) For this Act (despite anything else in this chapter), *worker* does not include an individual who would, apart from this section, be a worker employed by an employer, if the individual is a member of the employer's family and lives in the employer's home.

(3) However, subsection (2) does not apply to an individual if the employer tells the insurer who insures the employer against liability under this Act the name, nature of employment and estimated wages of the individual—

- (a) when the employment begins; and
- (b) whenever the insurance is renewed.

**4C Casuals not employed for trade or business** (ACT WCA s 6 (1) (def of *worker*, par (a)) and (3C))

(1) For this Act, *worker* does not include an individual (the *casual employee*) employed by someone (the *principal*) on a casual basis to perform work for the principal other than work that is for (or

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incidental to) the principal's trade or business unless the casual employee is taken to be a worker under any of the following provisions:

- (a) subsection (2) (which deals with casual employment found through employment agencies);
  - (b) section 4D (Regular contractors and casuals);
  - (c) section 5D (Religious workers).
- (2) If the casual employee's employment was found for the employee by a person who carries on the business of an employment agent, for this Act the casual employee is taken to be a **worker** employed by the employment agent.

### Examples of casual employees who are not workers

- 1 A gardener irregularly employed by the occupier of residential premises to work in the garden of the premises (unless engaged through an employment agent—see example 4).
- 2 A babysitter irregularly employed by the parents of young children (unless engaged through an employment agent—see example 4).

### Examples of casual employees who are workers

- 1 A gardener irregularly employed by the owner of a business to work on the grounds of the premises where the employer's business is carried on. The gardener is taken to be a **worker** employed to perform work incidental to the principal's business (see s (1)).
- 2 A babysitter irregularly employed by the parents of young children who is engaged through an employment agency. The babysitter is taken to be a **worker** employed by the agency rather than the parents (see s (1) (a) and s (2)).
- 3 A babysitter regularly and systematically employed (for example, once a week over a 6 month period) by the parents of young children. The babysitter is taken to be a **worker** employed by the parents under s 4D (Regular contractors and casuals)—see s (1) (b).

## 4D Regular contractors and casuals (CW WRR r 30BA (3))

- (1) This section applies to the engagement of an individual by a person (the **principal**) if—



- 
- (a) the individual has been engaged by the principal—
    - (i) under a contract for services to work for the principal (whether or not on a casual basis); or
    - (ii) on a casual basis under a contract of service to perform work for the principal other than work that is for (or incidental to) the principal's trade or business (unless section 4C (2) applies, which deals with casual employment found through employment agencies); and
  - (b) the individual personally does part or all of the work; and
  - (c) if the principal is a corporation—the individual is not an executive officer of the corporation.

*Note for par (a) (ii)* Section 4C (2) provides that if a casual worker employed other than for the employer's trade or business is engaged through an employment agent, the casual worker is a **worker** employed by the agent.

- (2) For this Act, the individual is taken to be a **worker** employed by the principal if—
  - (a) the engagement, under the contract or similar contracts, has been on a regular and systematic basis; or
  - (b) the individual has (or, apart from any injury, would have had) a reasonable expectation of the engagement continuing on a regular and systematic basis (under the contract or similar contracts), even if the engagement has not been on a regular or systematic basis.
- (3) To work out whether an engagement has been on a regular and systematic basis, or whether there is (or would have been) a reasonable expectation of an engagement continuing on that basis, relevant matters include (but are not limited to) the following:
  - (a) the terms of all relevant contracts;
  - (b) the working relationship between the principal and the individual and all associated circumstances;

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- (c) the period of the engagement, or the periods of the engagement if it has not been continuous;
- (d) the frequency of work under the contract or similar contracts;
- (e) the number of hours worked under the contract or similar contracts;
- (f) the type of work;
- (g) normal arrangements for someone engaged to perform that type of work.

### Examples of individuals who are workers

#### 1 Payment by commission

A sales representative engaged under a 3 month contract for payment by commission that forms part of a regular and systematic pattern of similar contracts to work for a real estate agency, canvasser or retailer, even if there is no express or implied guarantee of continuing work.

#### 2 IT consultant—engagement under indefinite retainer

An information technology consultant engaged on a retainer under which it is agreed that the consultant will be regularly and systematically available, on call by the principal, to offer advice or attend at short notice, even if the consultant was only recently engaged.

#### 3 Owner-driver of a truck—regular engagement

An owner-driver of a truck engaged by a local ACT carrier for an overnight trip (leaving regularly on the same day each week), even if any (or all) of the following apply:

- there is occasionally no work for the driver;
- the driver also works (or is free to work) for other carriers;
- the driver was only recently engaged by the carrier.

#### 4 Taxidriver (non-owner)—regular engagement

A taxidriver engaged by the owner of the taxi under a contract (or contracts) for services for a certain number of shifts each week on a regular basis even if any (or all) of the following apply:

- the driver works (or is free to work) different shifts from week to week;
- the driver also works (or is free to work) for other taxi owners;
- the driver was only recently engaged by the taxi owner.

#### 5 Building contractor—exclusive engagement

A bricklayer engaged under contracts for services by a particular builder for some years, who has worked for almost no-one else over that time, even if there is no express or implied guarantee of continuing work.

6 Regular casual worker

A gardener engaged by a householder (under contracts of service or for services) on a regular and systematic basis over a number of years to work in the grounds of the house. The gardener's engagement may be found to be 'regular and systematic' even if any (or all) of the following apply:

- there is no express or implied guarantee of continuing work;
- the gardener also works (or is free to work) for other households;
- there have been occasional periods during which the gardener has not worked for the householder.

**Examples of individuals who are not workers**

1 Payment by commission—no guarantee of future work

A sales representative engaged under a 3 month contract for services with a real estate agency, canvasser or retailer, and who is paid by commission, if—

- the contract does not form part of a regular and systematic pattern of similar contracts; and
- there is no express or implied guarantee that any further similar contract will be offered, whether in a document or by inference from the working relationship between the principal and the individual.

2 IT consultant—occasional engagement

An information technology consultant who is occasionally engaged by a small business for a week or more at a time under a contract for services, but not on a regular basis.

3 Owner-driver of a truck—irregular engagement

An owner-driver of a truck engaged under contracts for services with a furniture retailer whenever available, who has made deliveries every day of the week at times (for example, just before Christmas), but at other times may go for months without working for the retailer.

4 Taxidriver (non-owner)—irregular engagement

A taxi driver engaged by the owner of the taxi occasionally, but not regularly or systematically, under contracts for services to fill in for absent drivers.

5 Building contractor—irregular engagement

A bricklayer engaged under contracts for services by a particular builder several times a year, but who is not regularly engaged by the builder.

6 Irregular casual worker

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A tree surgeon engaged by a householder on an irregular basis (under contracts of service or for services) to prune the trees around a house. The engagement may be found not to be 'regular and systematic' even if the tree surgeon has been occasionally engaged by the householder for many years. (However, if the tree surgeon is engaged through an employment agent, the tree surgeon is a *worker* employed by the agent (see s 4C (2).)

## 5 Labour hire arrangements

For this Act, an individual is taken to be a *worker* employed by a person (the *labour hirer*) if—

- (a) the individual has been engaged by the labour hirer under a contract for services to work for someone other than the labour hirer; and
- (b) there is no contract to perform the work between the individual and the person for whom the work is to be performed; and
- (c) the individual personally does part or all of the work; and
- (d) if the labour hirer is a corporation—the individual is not an executive officer of the corporation.

*Note 1* This section does not make an employment agent the employer of those for whom the agency finds work if the workers are engaged directly by the person for whom the work is to be performed. It makes the labour hirer the employer only if there is no contractual relationship between the worker and the person for whom the work is to be performed (see par (b)).

*Note 2* Under s 5AA (Subcontracting), the person for whom the work is to be performed may be liable as 'principal' to pay compensation to the worker, as well as the labour hirer under this section. The 'principal' may then recover compensation from the labour hirer (see s 5AA (3)). See also note 3 at the beginning of this part.

## 5A Trainees

- (1) For this Act, an individual is taken to be a *worker* employed by a person (the *principal*) if—
  - (a) the individual is engaged under an arrangement (whether or not under contract) by which training or on-the-job experience is provided to the individual; and
  - (b) the training or experience is in relation to work that is for (or incidental to) the principal's trade or business; and
  - (c) the individual performs work that is for (or incidental to) the principal's trade or business while so engaged; and
  - (d) if the principal is a corporation—the individual is not an executive officer of the corporation.
- (2) An individual may be taken to be a worker under subsection (1) even if the individual receives no payment for the engagement.

## 5B Outworkers (ACT WCA s 6 (3))

- (1) This section applies to an individual (the *outworker*) who is engaged by a person (the *principal*) under a contract for services to treat or manufacture articles or materials, or to perform other services—
  - (a) in the outworker's own home; or
  - (b) on other premises not under the control or management of the principal.
- (2) To remove doubt, the outworker is taken to be a *worker* employed by the principal if—
  - (a) the outworker is taken to be a worker employed by the principal under section 4D (Regular contractors and casuals); or
  - (b) the outworker is taken to be a worker employed by the principal under section 5 (Labour hire arrangements).

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### Example of an outworker

A keyboard operator engaged under a contract for services by an information technology firm to undertake data conversion for the firm (or for another firm) in the operator's home.

## 5C Timber contractors (ACT WCA s 6 (3A), (3B))

- (1) This section applies to an individual (the *timber contractor*) who is engaged by a person (the *principal*) under a contract for services to do any of the following work:
  - (a) logging (including, for example, felling, crosscutting, snigging, loading, carting, bundling and debarking);
  - (b) felling or cutting trees for firewood;
  - (c) delivering timber or firewood;
  - (d) clearing timber, cutting scrub, preparing land for tree planting, planting trees, pruning trees or coppice cleaning.
- (2) The timber contractor is taken to be a *worker* employed by the principal if—
  - (a) the work is for (or incidental to) the principal's trade or business; and
  - (b) the timber contractor personally does part or all of the work; and
  - (c) if the principal is a corporation—the timber contractor is not an executive officer of the corporation.
- (3) This section applies whether the work is to be performed by the timber contractor—
  - (a) for the principal; or
  - (b) for someone (other than the principal) with whom the timber contractor has no contract to perform the work.

## 5D Religious workers (ACT WCA s 6A)

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- (1) The Minister may make a declaration, in writing, for this section in accordance with a request by—
    - (a) a religious organisation; or
    - (b) a person acting on behalf of a religious organisation.
  - (2) For this Act—
    - (a) an individual included in a class of individuals declared by the Minister is taken to be a *worker* employed by the person stated in the declaration to be the employer of individuals in that class; and
    - (b) the individual's employment is taken to be as stated in the declaration for individuals in the class.
  - (3) A declaration is a notifiable instrument.

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

## 5E Commercial voluntary workers

- (1) This section applies if individuals (*commercial volunteers*) are engaged under an arrangement by which the commercial volunteers—
  - (a) perform work that is for (or incidental to) the trade or business of someone else (the *principal*); and
  - (b) receive no payment for the work (apart from any payment for expenses).
- (2) A commercial volunteer is taken to be a *worker* employed by the principal, unless the principal is exempt from the application of this subsection in relation to the volunteer under a certificate given under subsection (3).
- (3) On application by the principal, the Minister may give the principal a certificate (a *volunteer exemption certificate*) exempting the principal from the application of subsection (2) in relation to the commercial volunteers mentioned in the certificate if the Minister

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considers it appropriate, having regard to the interests of the principal and the commercial volunteers mentioned.

- (4) A volunteer exemption certificate must state—
- (a) which commercial volunteers (or class of commercial volunteers) it applies to; and
  - (b) the work it applies to; and
  - (c) the period, or the event, it applies to.
- (5) A volunteer exemption certificate is a notifiable instrument.

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

## 5F Public interest voluntary workers

- (1) The Minister may make a declaration for this section in relation to work (*public interest voluntary work*) undertaken by volunteers for a stated entity that the Minister considers necessary or desirable in the public interest.
- (2) For this Act, an individual is taken to be a *worker* employed by the entity stated in the declaration, or a person (the *principal*) named in the declaration on behalf of the entity, if the individual—
- (a) performs public interest voluntary work for the entity or the principal; and
  - (b) receives no payment for the work (apart from any payment for expenses).
- (3) A declaration under this section is a disallowable instrument.

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

## 6 Part 2, heading

*substitute*

# Chapter 4 Entitlement to compensation

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**7 New part 4.1***insert***Part 4.1 Important concepts****5G Meaning of *cpi indexed* and *awe indexed***

- (1) In this chapter:

*awe indexed*, for an amount, means the amount as adjusted in line with any adjustment in the AWE after the commencement of the provision in which the amount appears.

*CPI* means the All Groups Consumer Price Index (Canberra) issued by the ABS.

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

*cpi indexed*, for an amount, means the amount as adjusted in line with any adjustment in the CPI since the commencement of the provision in which the amount appears.

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

- (2) However, if an amount to be awe indexed or cpi indexed would, if adjusted in line with the adjustment (the *negative adjustment*) to the AWE or CPI, become smaller, the amount is not reduced in line with the negative adjustment.
- (3) An amount that, in accordance with subsection (2), is not reduced may be increased in line with an adjustment in the AWE or CPI that would increase the amount only to the extent that the increase, or part of the increase, is not one that would cancel out the effect of the negative adjustment.
- (4) Subsection (3) does not apply to a negative adjustment once the effect of the negative adjustment has been offset against an increase in line with an adjustment in the AWE or CPI.

**Example of adjustments**

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

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

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

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

### **5H Working out average pre-incapacity weekly earnings for non-contractor (SA WRC s 4)**

- (1) In working out average pre-incapacity weekly earnings for a worker who is not a contractor—
  - (a) if the worker was, immediately before the injury, employed by 2 or more employers—the worker's earnings from all employment must be taken into account; and
  - (b) the actual weekly earnings of the worker may be taken into account over—
    - (i) a period of 1 year before the injury; or
    - (ii) if the worker 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 worker under subsection (1) because the worker has only been employed for a short time, because of the terms of the worker's employment or for some other reason, the worker'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 worker; or
  - (b) if there is no-one mentioned in paragraph (a) in the same employment—others in the same class of employment as the worker, who perform similar work at the same grade as the worker.

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**5I Working out average pre-incapacity weekly earnings for contractor (SA WRC s 4)**

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

- (a) as if the worker were an employee; and
- (b) if there is an award or industrial agreement applying to the class and grade of work in which the worker was engaged—by reference to the award or industrial agreement.

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

(1) In working out average pre-incapacity weekly hours for a worker who is not a contractor—

- (a) if the worker was, immediately before the injury, employed by 2 or more employers—the worker's work hours from all employment must be taken into account; and
- (b) the actual weekly work hours of the worker over a period of up to 1 year before the injury may be taken into account.

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

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

**5K Working out average pre-incapacity weekly hours for contractor**

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

**5L Overtime—hours and wages**

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

**5M Gradual onset of incapacity**

- (1) This section applies if, because of the gradual onset of a worker's injury, it appears that the level of the worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, have been affected.
- (2) The worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, must be set at an amount that fairly represents the weekly amount that the worker would have been earning or working if the level had not been affected.

**8 Section 7**

*substitute*

## Part 4.2 Compensation for personal injury

### 6C General entitlement to compensation for personal injury (ACT WCA s 7 (1))

- (1) An employer is liable to pay compensation under this Act if a worker of the employer suffers personal injury arising out of, or in the course of, the worker's employment.
- (2) However, if the injury is caused by a disease, the injury is taken to have arisen out of, or in the course of, the worker's employment only if the employment substantially contributes to the injury.
- (3) Also, an injury suffered by a worker partly or completely because the worker had any of the following pre-existing conditions is taken to have arisen out of, or in the course of, the worker's employment only if the employment substantially contributes to the injury:
  - (a) diseased heart valve;
  - (b) coronary artery disease;
  - (c) aortic aneurism;
  - (d) cerebral aneurism.
- (4) Further, this section is subject to the following provisions:
  - (a) section 7A (Compensation limited to Territory workers);
  - (b) section 7B (Injury outside Australia);
  - (c) part 4.8 (Exceptions to entitlements to compensation);
  - (d) in relation to the entitlement to weekly compensation—
    - (i) section 8A (What if the worker is dead?);
    - (ii) section 10ZI (Compliance by workers).

### 6D Amounts of compensation under Act cumulative (ACT WCA s 7 (5))

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

### 6E Payments to people with legal disabilities

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

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

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

- (a) a child; or
- (b) a person with a mental disability.

## 9 Compensation limited to Territory workers Section 7A (3)

*substitute*

- (3) A worker is taken to be a worker of a particular Territory or State (the *home jurisdiction*) if the worker carries out the work of the worker's employer outside the home jurisdiction (whether within or outside Australia) only if—
  - (a) the worker usually carries out the work of the worker's employer in the home jurisdiction; and
  - (b) the worker carries out the work elsewhere because of an arrangement (that is part of the worker's employment) for the worker to carry out the work of the employment outside the

home jurisdiction for a period that may reasonably be thought likely to be less than 6 continuous months in any 12 month period.

## 10 Section 8

*substitute*

### 8 Journey claims (NSW WCA s 10)

- (1) A personal injury received by a worker on an employment-related journey is, for this Act, an injury arising out of, or in the course of, the worker's employment.

*Note* Compensation may be payable for an injury arising out of, or in the course of, employment under s 6C (Compensation for personal injury).

- (2) The following are *employment-related journeys* for the worker:
- (a) a journey between the worker's home and workplace;
  - (b) a journey between the worker's home and an educational institution that the worker is attending for an employment-related purpose;
  - (c) a journey between the worker's home or workplace and another place if the purpose of the journey is to obtain 1 or more of the following in relation to a previous injury for which the worker is entitled to compensation under this Act:
    - (i) a medical certificate;
    - (ii) medical advice, attention or treatment;
    - (iii) compensation.
- (3) However, subsection (1) applies to an injury received during or after a non employment-related interruption of, or deviation from, an otherwise employment-related journey only if the risk of injury was not materially increased because of the interruption or deviation.
- (4) For this section—

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- (a) an employment-related journey to the worker's home is taken to end at the boundary of the premises where the worker's home is located; and
  - (b) an employment-related journey from the worker's home is taken to begin at the boundary of the premises where the worker's home is located.
- (5) For this section:
- home*, for a worker, means the place where the worker usually lives.
- workplace*, for a worker, means the worker's place of employment.

## 11 New parts 4.3 to 4.8

*insert*

### Part 4.3 Weekly compensation

#### 8A What if the worker is dead?

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

#### 8B When do weekly compensation payments begin?

If the worker is entitled to compensation for a compensable injury—

- (a) the payment of weekly compensation must begin when the worker gives notice of the injury to the employer; and
- (b) the worker is entitled to weekly compensation from the date of the injury.

#### 8C Totally incapacitated workers

- (1) This section applies if a worker is totally incapacitated because of a compensable injury.



- 
- (2) For 26 weeks after the incapacity date, the worker is entitled to receive weekly compensation equal to the worker's average pre-incapacity weekly earnings.

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

- (3) After the 26 weeks, the worker is entitled to receive weekly compensation equal to—

- (a) if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker—100% of the worker's average pre-incapacity weekly earnings; or
- (b) if 100% of the worker's average pre-incapacity weekly earnings is more, but 65% of those earnings is less, than the pre-incapacity floor for the worker—the statutory floor; or

*Note* **Statutory floor** is defined in the dict.

- (c) if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor for the worker—whichever of following is (at the time of payment) more:
- (i) 65% of the worker's average pre-incapacity weekly earnings;
- (ii) the statutory floor.
- (4) A worker stops being entitled to compensation under this section at the earliest of the following times:
- (a) when the worker stops being totally incapacitated;
- (b) when the worker returns to work;
- (c) for a worker who, at the time of the injury being compensated, was more than 2 years younger than pension age—when the worker reaches pension age;
- (d) for a worker who, at the time of the injury being compensated, was 2 years younger than pension age, or older—2 years after

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the worker first became entitled to compensation under this section;

(e) when the worker dies.

(5) In this section:

*pre-incapacity floor*, for a worker, means the statutory floor that applied immediately before the worker's incapacity date.

### **8D Partially incapacitated workers up to 26 weeks after incapacity date**

(1) This section applies if the worker is partially incapacitated because of a compensable injury.

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

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

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

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

(a) suitable employment that the worker unreasonably rejects;

(b) suitable employment that the worker obtains but unreasonably discontinues.

### **8E Partially incapacitated workers after 26 weeks after incapacity date**

(1) This section applies if—

(a) the worker is partially incapacitated because of a compensable injury; and

(b) 26 weeks have passed since the incapacity date.

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- (2) The worker is entitled to receive weekly compensation equal to the difference between the weekly amount the worker is being paid for working and—
- (a) if 100% of the worker's average pre-incapacity weekly earnings is less than the statutory floor—100% of the worker's average pre-incapacity weekly earnings; or
  - (b) if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor—the statutory floor; or
  - (c) if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling—the statutory ceiling; or
  - (d) in any other case—the relevant percentage of the worker's average pre-incapacity weekly earnings.
- (3) For subsection (2), the *relevant percentage* is—
- (a) if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less—65%; or
  - (b) if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50%—75%; or
  - (c) if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75%—85%; or
  - (d) if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85%—95%; or
  - (e) if the worker is working more than 85% of the worker's average pre-incapacity weekly hours—100%.
- (4) In this section:

*statutory ceiling*, in relation to an amount, means 150% of AWE at the time the amount is to be paid.

### **8F Stopping of payments for partial incapacity**

A worker stops being entitled to payments under section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date) at the earliest of the following times:

- (a) when the worker stops being partially incapacitated;
- (b) for a worker who, at the time of the injury being compensated, was more than 2 years younger than pension age—when the worker reaches pension age;
- (c) for a worker who, at the time of the injury being compensated, was 2 years younger than pension age, or older—2 years after the worker first became entitled to compensation under section 8C (Totally incapacitated workers), 8D or 8E, whichever is earliest;
- (d) when the worker dies.

### **8G Effect on payment period of loss of entitlement to weekly compensation**

- (1) This section applies if a worker would be entitled to weekly compensation under section 8C (Totally incapacitated workers), section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date) but the payment of the compensation has been stopped under section 10F (No compensation while imprisoned) or section 10ZI (Compliance by workers).
- (2) The period when the worker's entitlement to payment has stopped is counted as part of the period for payment under sections 8C, 8D and 8E.

### **8H Living outside Australia (ACT WCA sch 1 cl 14)**

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- (1) A worker who is otherwise entitled to receive weekly compensation is not entitled to the compensation if the worker stops living in Australia.
  - (2) Subsection (1) does not apply to the worker if a medical referee certifies that—
    - (a) the incapacity resulting from the injury is likely to be permanent; or
    - (b) the worker's absence from Australia is likely to help the worker recuperate.

**8I Effect of living outside Australia if compensation still payable (ACT WCA sch 1 cl 14)**

- (1) This section applies if the worker lives outside Australia but is, apart from this section, still entitled to weekly compensation.

*Note* A worker living outside Australia is still entitled to compensation if s 8H (2) applies to the worker.

- (2) The worker is not entitled to weekly compensation, but is entitled to receive quarterly the amount of the weekly compensation payable during the previous quarter.
- (3) However, the worker is entitled to receive quarterly payment of compensation only if the worker proves the worker's identity and that the worker continues to be incapacitated by the incapacity in relation to which the weekly compensation is payable.
- (4) In this section:

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

**8J Effect of payment of weekly compensation on other benefits etc**

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

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### Examples of benefits not affected

- 1 accrual of long service leave
- 2 accrual of annual leave

### **8K No assignment etc of weekly compensation** (ACT WCA sch 4, cl 13)

Weekly compensation (including compensation payable under section 8I (Effect of living outside Australia if compensation still payable)) may not—

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

## **Part 4.4 Compensation for permanent injuries**

### **8L Meaning of *loss*** (NSW WCA s 65)

In this chapter:

*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).

**8M Meaning of *single loss amount***

In this part:

*single loss amount* means \$100 000 cpi indexed.

**8N Meaning of *maximum loss amount***

In this part:

*maximum loss amount* means \$150 000 cpi indexed.

**8O Compensation for permanent injuries generally  
(ACT WCA s 10D and s 10F, NSW WCA s 66)**

- (1) A worker who has suffered a loss mentioned in an item of schedule 1 as the result of a compensable injury is entitled to receive from the worker's employer, as compensation for the loss, the percentage of the single loss amount mentioned in that item.
- (2) For this section, the loss is to be worked out when the last of the following happens:
  - (a) the worker's employer became liable to pay compensation;
  - (b) it is unlikely that there will be an improvement or further improvement in the use, or efficient use, of the injured part of the body.
- (3) If a payment of compensation under this part has been made in relation to an injury, nothing prevents a further payment of compensation under this part from being made in relation to the same injury if there is an increase in the loss of the efficient use of the injured part of the body.

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

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

**8P Compensation for 2 or more losses**

A worker who has suffered 2 or more losses mentioned in schedule 1 (Compensation for permanent injuries) because of an

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injury is not entitled to receive as compensation under this part more than the maximum loss amount for the losses.

### **8Q Compensation and left-handedness**

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

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

### **8R 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.

### **8S Compensation for only arm, leg, hand or foot**



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

### **8T Compensation for loss of sexual organs**

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

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

### **8U Loss of bowel function**

To work out whether and to what extent a worker has suffered permanent loss of bowel function—

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

### **8V Proportionate loss of use (NSW WCA s 68)**

- (1) If a loss suffered by a worker consists of the loss of a proportion, but not all, of a thing mentioned in schedule 1 (Compensation for permanent injuries), a percentage of the compensation payable for the total loss of the thing equal to the percentage lost by the worker is payable as compensation under section 80 (Compensation for permanent injuries generally).
- (2) In working out the extent of the loss of the thing, the extent to which the loss, or the effect of the loss, may be reduced or limited by an external removable aid or appliance is not to be taken into account.

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- (3) The amount of compensation payable for a particular case must, unless decided by agreement, be worked out by arbitration under this Act.

### **8W Special provisions for HIV/AIDS (NSW WCA s 67A)**

- (1) Compensation is not payable under section 8O (Compensation for permanent injuries generally) for a loss that is related to HIV infection or AIDS if the HIV or AIDS was contracted during voluntary sexual activity or illicit drug use.
- (2) Section 8V does not apply to a loss that is HIV infection or AIDS.
- (3) In this section:

*AIDS* means Acquired Immune Deficiency Syndrome.

*HIV infection* means an infection by the Human Immunodeficiency Virus.

### **8X Deduction for previous injury or pre-existing condition (NSW WC s 68A (1), (2), (6) and (8))**

- (1) In working out the compensation payable under this part for a loss (the *initial loss*), an amount must be deducted from the compensation (the *deductible proportion*) for any proportion of the loss attributable to—
  - (a) a previous injury (whether or not it is an injury for which compensation has been paid, or is payable, under this part); or
  - (b) a pre-existing condition or abnormality.
- (2) In subsection (1), it does not matter whether the initial loss is a total or partial loss.
- (3) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to work out, it is to be assumed that the deductible proportion for the loss (or the relevant part of the loss) is 10% of the loss, unless this assumption is contrary to the available evidence.

**Example**

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

- (4) However, section 8Z must be used to work out how much (if any) of a worker's hearing loss is caused by age.

**8Y Further loss and deductible proportions**  
(NSW WC s 68A (3) and (4))

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

**8Z Loss of hearing because of age** (NSW WC s 70)

- (1) This section applies in working out the percentage of the decrease of hearing in relation to boilermakers deafness of a worker who is the prescribed age or older, but does not apply to total hearing loss in either of the worker's ears.
- (2) For this part, it is to be conclusively presumed that the worker's loss of hearing to be attributed to loss of hearing because of age is 0.5 decibels for each complete year of the worker's age over the prescribed age.
- (3) For this section, the *prescribed age* is—
  - (a) for a male—55 years old; or
  - (b) for a female—65 years old.

**9 No compensation for less than 6% hearing loss**  
(NSW WCA s 69A (1), (3), (4), (5), (6))

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- (1) A worker is not entitled to compensation under section 8O (Compensation for permanent injuries generally) for a loss of hearing because of boilermakers deafness (the *hearing loss*) if the worker's total hearing loss is less than 6%.
- (2) However, the worker is entitled to compensation for the hearing loss if the total hearing loss reaches 6% or more.

### Example

Assume all hearing losses mentioned in this example are because of boilermakers deafness.

A worker suffers a hearing loss of 3% (the first hearing loss that the worker has suffered). No compensation is payable under section 8O for the loss because it is less than 6%, although notice of injury may be given or a claim may be made for the hearing loss.

The worker suffers a further hearing loss of 6%, bringing the total loss to 9%. The total loss has now passed the 6% threshold and compensation is payable for the full 9%. Compensation for the initial 3% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for the initial hearing loss.

The worker suffers a further hearing loss of 6%. The worker is entitled in the usual way to compensation for the 6% further loss because the 6% threshold has already been passed (the total loss is now 15%).

*Note* Pt 5.3 (Obligations on injury) and ch 6 (Claims) apply to a hearing loss even if it is not immediately compensable because of this section.

- (3) In working out the percentage hearing loss because of boilermakers deafness, the loss of hearing is to be worked out as a proportionate loss of hearing of both ears, even if the loss is in 1 ear only.
- (4) A lawyer or agent who acts for a worker on a claim for compensation for loss of hearing because of boilermakers deafness is not entitled to recover costs from the worker or the employer in relation to the claim if no compensation is payable on the claim because the worker's total hearing loss is less than 6%.
- (5) In this section:

*total hearing loss* means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

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**9A Presumption to be drawn from refusal to submit to hearing examination (NSW WCA s 69A (7))**

- (1) This section applies to a worker with a claim for which no compensation is payable because of section 9.
- (2) If the worker fails to allow himself or herself to be examined as required under the worker's personal injury plan, or obstructs the examination, it is presumed in the absence of evidence to the contrary that the worker has no hearing loss because of boilermakers deafness.

**9B Employer's responsibility to pay for hearing loss tests (NSW WCA s 69B)**

- (1) If an employer would, apart from section 9 (No compensation for less than 6% hearing loss), be liable to pay compensation under section 8O (Compensation for permanent injuries generally) for a worker's hearing, the employer is liable under this chapter to pay the cost of only the following hearing tests for the loss:
  - (a) a test carried out at least 3 years after any previous test that the employer has paid for;
  - (b) a test that finds that the worker has suffered a total hearing loss because of boilermakers deafness of 6% or more;
  - (c) a test carried out after the worker has left the worker's employment with the employer if the hearing loss is attributable to the employment;
  - (d) a test carried out by a doctor, or audiologist, using an audiogram to work out the level of hearing loss.
- (2) The cost of a hearing test for the worker is the cost of obtaining a medical certificate, and any examination required for the certificate, about the extent of the worker's hearing loss.
- (3) This section does not require payment by an employer for the cost of obtaining a hearing test that the employer would not otherwise be liable to pay for under this chapter.

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(4) In this section:

*total hearing loss* means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

### **9C Reimbursement for costs of medical certificate and examination (NSW WCA s 73)**

(1) Obtaining a medical certificate, and any examination required for the certificate, is taken to be medical or related treatment for this chapter if the worker gives the employer a copy of the certificate.

(2) In this section:

*medical certificate* means a report or certificate of a doctor that certifies—

- (a) that a worker has suffered a loss mentioned in schedule 1 (Compensation for permanent injuries); or
- (b) the extent of the loss to allow the amount of compensation payable for the loss to be worked out.

### **9D Limited entitlement if death happens within 3 months (ACT WCA s 10F)**

(1) This section applies if—

- (a) a worker has received a compensable injury; and
- (b) the worker dies within 3 months after receiving the compensable injury because of the compensable injury or another injury received at the same time.

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

- (a) item 2 (loss of sense of taste or smell);
- (b) item 3 (loss of senses of taste and smell);
- (c) item 41 (loss of sexual organs);

- (d) item 42 (loss of both breasts);
- (e) item 43 (loss of 1 breast);
- (f) item 44 (permanent and total loss of capacity to engage in sexual intercourse);
- (g) item 49 (severe facial disfigurement);
- (h) item 50 (severe bodily disfigurement).

## **Part 4.5 Compensation for medical treatment, damage and other costs**

### **9E Application of pt 4.5 (ACT WCA s 11 (1))**

This part applies if—

- (a) compensation under this Act is payable by an employer to, or in relation to, a worker in relation to an injury; or
- (b) the operation of section 9 (No compensation for less than 6% hearing loss) means no compensation is payable by an employer to, or in relation to, a worker in relation to an injury; or
- (c) compensation would be payable by an employer to, or in relation to, a worker in relation to an injury except that—
  - (i) the worker is not incapacitated for work; or
  - (ii) the worker is imprisoned (see section 10F); or
  - (iii) weekly compensation has been suspended under section 10ZI (Compliance by workers); or
  - (iv) the worker has contravened this Act.

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

**9F Employer liability for medical treatment and damage**  
(ACT WCA s 11 (2), (3), (3A))

- (1) The employer is liable to pay—
  - (a) for the cost of medical treatment reasonably obtained in relation to the injury—an amount of compensation appropriate for the provision of the medical treatment, having regard to the charges customarily made for similar medical treatment in the place where the treatment is obtained; and
  - (b) in relation to any damage to, or loss of, the worker's clothing sustained in association with the injury—compensation of a reasonable amount for the repair or replacement of the damaged or lost clothing.
- (2) However, the total amount payable under subsection (1) for each of the following must not be more than the maximum amount:
  - (a) for the cost of medical treatment consisting of the repair or replacement of a worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid;
  - (b) for damage to or loss of a worker's clothing.
- (3) In subsection (2):

*maximum amount*, in relation to a treatment, damage or loss, means—

  - (a) if an amount has been agreed between the worker and employer—that amount; or
  - (b) in any other case—\$500 cpi indexed.
- (4) In this section, the cost of medical treatment is taken to include—
  - (a) the amount of wages lost by the worker because of the worker's attendance at a place (the *treatment place*) to undergo the treatment; and
  - (b) the cost of taking the worker (whether the worker or someone else does the taking) to and from the treatment place worked



out under section 9J (Transport costs other than private car) or section 9K (Working out transport costs for private cars); and

- (c) the cost of any accommodation (including the cost of meals) required by the worker because of the worker's attendance at the treatment place worked out under section 9L (Costs of accommodation and meals).

### **9G Claim for compensation for pt 4.5 (ACT WCA s 11 (4), (5))**

- (1) A worker may make a claim for compensation under this part for the cost of medical treatment or in relation to damage to, or loss of, the worker's clothing only if the worker has given the employer written notice stating—
  - (a) the amount of compensation sought; and
  - (b) reasonable details of the expenses for which compensation is sought.
- (2) However, a failure to give notice, or a defect or inaccuracy in the notice, does not affect a claim for compensation under this part if it is found in the proceeding on the claim that—
  - (a) if a notice or amended notice were then given and the hearing postponed, the employer's defence is not, or would not be, prejudiced by the failure, defect or inaccuracy; or
  - (b) the failure, defect or inaccuracy was caused by mistake or other reasonable cause.

### **9H Second opinions (ACT WCA s 11 (6))**

- (1) This section applies if the worker receives medical treatment and claims the cost of it from the employer under this part.
- (2) The employer may, in consultation with the doctor or other person providing the treatment, and before making a payment under this part, require the worker to be examined by a doctor, or other person, chosen by the employer.

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### **9I Payments for treatment received from hospital (ACT WCA s 11 (7))**

- (1) This section applies if the employer is liable under this part to pay an amount in relation to medical treatment received by the worker from a hospital.
- (2) The employer must pay the amount, less any amount previously paid by the worker in relation to the treatment, on demand—
  - (a) for a private hospital—to the proprietor of the hospital; or
  - (b) for any other hospital—to the person authorised in writing by the governing entity in charge of the hospital to receive payments payable to the hospital.

### **9J Transport costs other than private car (ACT WC Regs r 14)**

- (1) This section sets out how the costs of taking an injured worker to and from a place (other than by private motor vehicle) to undergo medical treatment must be worked out.
- (2) If the worker cannot be taken in a motor vehicle (other than an ambulance) because of the worker's injury, the transport cost is the actual cost of the transport by ambulance.
- (3) The transport cost is the actual cost of the public transport if the worker is taken by public transport because, although the worker can be taken in a private motor vehicle—
  - (a) the worker is prohibited by law from taking himself or herself in a private motor vehicle and no-one else is available to take the worker in a private motor vehicle; or
  - (b) no private motor vehicle is available.
- (4) The transport cost is the reasonable cost of transport if a private motor vehicle or public transport is not reasonably available, or reasonably appropriate, to transport the worker in the circumstances.
- (5) In this section:

*public bus*—see the *Road Transport (Public Passenger Services) Act 2001*, dictionary.

*public transport* means a public bus, a taxi or a restricted taxi.

*restricted taxi*—see the *Road Transport (General) Act 1999*, section 100.

*taxi*—see the *Road Transport (General) Act 1999*, section 100.

### **9K Working out transport costs for private cars**

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

### **9L Costs of accommodation and meals (ACT WC Regs r 15)**

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

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

- (2) The relevant amount, for accommodation, is the amount that would be allowed for an employee on the lowest salary for which allowances are given for the place where the employee was accommodated.

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- (3) The worker is not entitled to payment for a meal unless the meal is eaten while the worker—
- (a) is travelling to or from medical treatment (the *treatment*) for which compensation is payable under this part; or
  - (b) is at a place to receive the treatment; or
  - (c) is staying at accommodation for which compensation is payable under this part.
- (4) In this section:

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

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

## Part 4.6 Compensation for death

### 10 Death benefits

- (1) This section applies to the death of a worker for which compensation is payable under this Act.
- (2) The dependants of the worker are entitled to the following:
- (a) a single lump sum payment of \$150 000 cpi indexed to be divided between the dependants;
  - (b) for each dependant who is a child—weekly compensation of \$50 cpi indexed;
  - (c) the funeral expenses of the worker to a maximum of \$4 000 cpi indexed.
- (3) In working out for this Act whether or not a child is, or was, dependent on the earnings of the worker, any family tax benefit within the meaning of the *A New Tax System (Family Assistance)*

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*Act 1999* (Cwlth), section 3 (definitions) in relation to the child must be disregarded.

- (4) Compensation under subsection (2) (b) is payable only while the person receiving it is a child.

**10A Payment into court of lump sum death benefits**  
(ACT WCA sch 1 cl 6)

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

## **Part 4.7 Registration of agreements for compensation**

**10B Registration of agreements for compensation**  
(NSW WCA s 66A (3), (4), (4A), (10))

- (1) If the worker agrees to receive an amount of compensation under section 8O (Compensation for permanent injuries generally) for a loss or under section 12J (How worker may commute rights) for the commutation of a right, a party to the agreement may apply to the Magistrates Court for registration of the agreement.

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- (2) The Magistrates Court may refuse to register the agreement if the court considers that the agreement is inaccurate or that the agreed amount of compensation is inadequate.
- (3) The Magistrates Court must refuse to register the agreement unless satisfied that the worker received independent legal advice about the agreement before entering into it.
- (4) An agreement may deal with the payment of costs.

### **10C Effect of registration of agreements**

(NSW WCA s 66A (1), (2), (7))

- (1) A worker with a registered agreement in relation to a loss or the commutation of a right is not entitled to receive any additional compensation for the loss or commutation of the right under an award of the Magistrates Court.
- (2) However, the Magistrates Court may award additional compensation if satisfied that—
  - (a) the agreement was obtained by fraud or undue influence; or
  - (b) the agreed amount of compensation was manifestly inadequate.
- (3) This section does not limit an award of additional compensation for a further loss suffered after the loss to which the agreement relates.

### **10D Cancellation or amendment of registered agreements**

- (1) On application by a party to a registered agreement, the Magistrates Court may amend the registered agreement or cancel the registration of the agreement.
- (2) The Magistrates Court may act under subsection (1) only if—
  - (a) a party becomes aware of evidence that was not available to the party when the agreement was made; and
  - (b) the court considers that, if the party had been aware of the evidence, the agreement would not have been made, or would not have been made as registered.

## Part 4.8 Exceptions to entitlements to compensation

### 10E When is compensation under Act generally not payable? (ACT WCA s 7 (3) and (4))

- (1) This section applies if, apart from this section, compensation in relation to an injury to a worker is payable under this Act.
- (2) Compensation is not payable if the injury to, or death of, the worker is caused by an intentionally self-inflicted injury.
- (3) Compensation is not payable if it is proved that the injury to the worker is attributable to the worker's serious and wilful misconduct, unless the injury results in death or serious and permanent disablement.
- (4) In subsection (3), the personal injury received by the worker is attributable to the serious and wilful misconduct of the worker if—
  - (a) at the time of the injury, the worker was under the influence of alcohol or another drug, unless the alcohol or other drug did not contribute to the injury or was not consumed or taken voluntarily; or
  - (b) the injury was otherwise attributable to the serious and wilful misconduct of the worker.
- (5) In this section:

*drug*—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

### 10F No compensation while imprisoned

A worker who is otherwise entitled to compensation under this Act is not entitled to compensation for a period when the worker is imprisoned because the worker has been convicted of an offence against a law of the Territory, a State, the Commonwealth or another Territory.

## Endnotes

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### **12 Compensation for death or incapacity through disease Section 9 (1) (b)**

*before*

contributing

*insert*

substantial

### **13 Compensation for disease Section 9B (1) and (2)**

*before*

contributing

*insert*

substantial

### **14 Section 9B (3) and (4)**

*before*

contributed

*insert*

substantially

### **15 Sections 10 to 10F**

*omit*

### **16 New chapter 5**

## **Chapter 5 Injury management process**

### **Part 5.1 Object and definitions for chapter 5**



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**10H Object of ch 5 (NSW WIMWCA s 41)**

The object of this chapter is to establish a system the aim of which is to achieve the best results for the timely, safe and durable return to work of workers following workplace injuries.

**10I Definitions for ch 5 (NSW WIMWCA s 42 (1))**

In this chapter:

*injured worker* means a worker who has received a workplace injury.

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

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

*injury notice*—see section 10O (2) (Early notification of workplace injury).

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

*nominated treating doctor*, for an injured worker, means the doctor or medical practice nominated under section 10X (Nomination of doctor for personal injury plan).

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

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

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### **10J Meaning of *employer* and *insurer* if more than 1** (NSW WIMWCA s 42 (2))

- (1) This section applies if 2 or more employers are or may be liable to pay compensation to an injured worker but the employers do not all still employ the worker.
- (2) In this chapter:

*employer*, of the injured worker, means the employer that last employed the worker.

*insurer* means the employer's insurer.

## **Part 5.2 General obligations**

### **10K 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.

### **10L 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 employer who is insured by the insurer is aware of the employer's obligations under this chapter and is aware of the requirements of the insurer's injury management program.

*Note* An employer may have obligations under the following provisions of this part:

- under s 10N to comply with the obligations imposed on the employer under the injury management program
- under s 10O (2) to give notice of injury to the insurer
- under s 10V to take part and cooperate in establishing a personal injury plan for a worker, and to comply with the plan
- under s 10ZA and s 10ZB to provide suitable work for an injured worker
- under s 10ZE to establish a return-to-work program.

(3) Subsection (2) does not apply to a self-insurer.

### **10M Insurer's obligation of prompt payment**

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

Maximum penalty: 10 penalty units.

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

- (a) the insurer believes on reasonable grounds that the service has not been provided, or has not been properly provided, and the insurer has told the service provider, in writing, why the insurer has not paid for the service; or
- (b) the insurer has another reasonable ground for not paying for the service.

### **10N Employer's obligations for injury management programs**

An employer (other than a non-business employer) must comply with the reasonable obligations imposed on the employer by the employer's insurer under the insurer's injury management program.

Maximum penalty: 10 penalty units.

### **10NA Register of injuries (NSW WIMWCA s 63)**

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- (1) This section applies to a mine, quarry, factory, workshop, office or shop (the *workplace*).
- (2) A register of injuries (the *register*) is to be kept at the workplace in a place that is readily accessible to workers at the workplace.
- (3) The manager of the mine or quarry, or the occupier of the factory, workshop, office or shop, must ensure the register is kept in accordance with subsection (2).

Maximum penalty: 50 penalty units.

- (4) A person must not, without lawful authority or excuse, change, damage, deface, remove or otherwise interfere with the register.

Maximum penalty: 20 penalty units.

- (5) A worker employed at the workplace, or a person acting on the worker's behalf, may enter in the register details of an injury received by the worker.
- (6) If details of the injury are entered in the register as soon as possible after the injury happens, the entry is taken to be notice of the injury given to the employer by the injured worker for this Act.

## Part 5.3 Obligations on injury

### 100 Early notification of workplace injury (NSW WIMWCA s 44)

- (1) The injured worker must tell the employer that the worker has received a workplace injury as soon as possible after being injured.

*Note* An injured worker may give notice of an injury by making an entry in a register of injuries (see s 10NA).

- (2) The employer must give the insurer notice of the injury (an *injury notice*) under section 10P within 48 hours after becoming aware that the worker has received a workplace injury.
- (3) Subsection (2) does not apply if the insurer is a self-insurer.

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**10P Injury notice (ACT WCA, s 25 ( 4), NSW WIMWCA s 62)**

- (1) An injury notice must state—
  - (a) the name and address of the injured worker; and
  - (b) the cause of the injury (in ordinary language); and
  - (c) the date and time the injury happened; and
  - (d) the name and address of the employer; and
  - (e) the name and address of the nominated treating doctor or, if there is no treating doctor, a doctor who has treated the worker for the injury.
- (2) The employer may give the notice orally, in writing or in electronic form.
- (3) However, if the employer gives the notice orally, the employer must give the notice in writing or in electronic form within 3 days after giving the notice orally.
- (4) If the worker has more than 1 employer, the notice must be given to the employer responsible for the workplace where the injury happened.
- (5) The notice of injury is taken to have been given to an employer—
  - (a) if it is given to a person designated for the purpose by the employer; or
  - (b) if it is given to a person under whose supervision the worker is employed.

**10Q What if employer does not give notice of injury within time?**

- (1) This section applies if an employer (other than a self-insurer) is given an injury notice for an injured worker, but does not give the insurer the injury notice within the time (the *notification time*) mentioned in section 100 (2) (Early notification of workplace injury).

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- (2) The employer is liable to pay the worker weekly compensation from the end of the notification time until the employer gives the insurer the injury notice.
- (3) The employer may not be indemnified by the insurer for a payment mentioned in subsection (2).

### **10R Obligation of insurer on being notified of injury** (NSW WIMWCA s 43 (4))

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

Maximum penalty: 10 penalty units.

## **Part 5.4 Obligations in relation to personal injury plans**

### **10S Personal injury plan for worker with significant injury** (NSW WIMWCA s 45)

- (1) If it appears to an insurer who is, or may be, liable to pay compensation to an injured worker on behalf of the worker's employer that the workplace injury is a significant injury, the insurer must establish a personal injury plan for the worker.
- (2) The personal injury plan must be established—
  - (a) in agreement with the employer (unless the employer is a self-insurer or a non-business employer) and the injured worker, to the maximum extent that their cooperation and participation allow; and
  - (b) with the assistance of an approved rehabilitation provider.

(3) The insurer must give effect to the personal injury plan established for the injured worker and, for that purpose, must comply with the obligations imposed on the insurer under the plan.

(4) In this section:

*significant injury* means a workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of longer than 7 days, whether or not any of those days are business days and whether or not the incapacity is total or partial or a combination of both.

#### **10T Provision of information about personal injury plan**

(1) The insurer must give both the employer and the injured worker information about the personal injury plan.

(2) The information must include a statement to the effect that the worker's entitlement to weekly compensation may stop if the worker unreasonably fails to comply with the requirements of this chapter after being asked to do so by the insurer.

(3) The insurer must keep the employer informed of significant steps taken, or proposed to be taken, under the personal injury plan for the worker, unless the employer is a self-insurer.

#### **10U Vocational rehabilitation**

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

#### **10V Employer's personal injury plan obligations** (NSW WIMWCA s 46)

(1) The employer must take part and cooperate in the establishment of a personal injury plan for the injured worker.

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Maximum penalty: 10 penalty units.

- (2) The employer must comply with the reasonable obligations imposed on the employer under the personal injury plan.

Maximum penalty: 10 penalty units.

- (3) This section does not apply if the employer is a self-insurer.

### **10W Worker's personal injury plan obligations** (NSW WIMWCA s 47)

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

*Note* If the injured worker does not take part and cooperate in the establishment of the worker's personal injury plan, the worker's weekly compensation may be stopped while time for payment of weekly compensation continues to run against the worker (see s 10ZI).

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

### **10X Nomination of doctor for personal injury plan**

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



- (5) The worker's personal injury plan must provide a way for the worker to change the worker's nominated treating doctor.

**10Y 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.

## **Part 5.5 Other obligations**

**10Z Injured worker's obligation to return to work**  
(NSW WIMWCA s 48)

The injured worker must make all reasonable efforts to return to work with the worker's pre-incapacity employer (that is, the employer liable to pay compensation to the worker) as soon as possible, considering the nature of the injury.

**10ZA Employer must provide suitable work for full-time, part-time and casual workers** (NSW WIMWCA s 49)

- (1) This section applies to a full-time, part-time or casual worker who has been totally or partially incapacitated for work because of an injury if the worker can return to work, whether on a full-time or part-time basis and whether or not to the worker's previous employment.
- (2) The employer liable to pay compensation to the worker under this Act in relation to the injury must provide suitable employment for the worker if asked by the worker within 6 months after the day the worker became entitled to weekly compensation under this Act.

Maximum penalty: 10 penalty units.

- (3) The employment that the employer must provide is employment that is both suitable employment and, so far as reasonably practicable,

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the same as, or equivalent to, the employment in which the worker was employed at the time of the injury.

- (4) This section does not apply if—
- (a) the worker voluntarily left the employment of the employer after the injury happened (whether before or after the beginning of the incapacity for work); or
  - (b) the employer ended the worker's employment after the injury happened, for a reason other than because the worker was not fit for employment because of the injury; or
  - (c) the employer is a non-business employer; or
  - (d) the employer cannot provide suitable employment.

### **10ZB Employer must provide suitable work for contract workers**

- (1) This section applies to a contract worker who has been totally or partially incapacitated for work because of an injury if the worker can return to work, whether on a full-time or part-time basis and whether or not to the worker's previous employment.
- (2) The employer liable to pay compensation to the worker under this Act in relation to the injury must provide suitable employment for the worker if asked by the worker—
- (a) if the contract, and any reasonably expected extension or renewal of the contract, ends or would end before the end of 6 months after the day the worker became entitled to weekly compensation under this Act—before the end of the following:
    - (i) the extension or renewal;
    - (ii) if there is no reasonably expected extension or renewal—the contract; or
  - (b) in any other case—within 6 months after the day the worker became entitled to weekly compensation under this Act.

Maximum penalty: 10 penalty units.

- (3) The employment that the employer must provide is employment that is suitable employment and, so far as practicable, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury.
- (4) This section does not apply if—
  - (a) the worker voluntarily left the employment of the employer after the injury happened (whether before or after the beginning of the incapacity for work); or
  - (b) the employer ended the worker's employment after the injury happened for a reason other than because the worker was not fit for employment because of the injury; or
  - (c) the employer is a non-business employer; or
  - (d) the employer cannot provide suitable employment.

**10ZC Payment of cost of treatment of injured worker**  
(NSW WIMWCA s 50)

- (1) The worker's personal injury plan may provide for the insurer to pay the following costs:
  - (a) the cost of any treatment for the workplace injury provided to the worker 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 worker for the workplace 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.

- (2) For a payment under subsection (1), it does not matter that the worker has not made a claim for compensation, that the insurer has

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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 employer (the *other employer*) accepts liability to pay compensation to the worker 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 employer.
- (4) An amount recoverable under subsection (3) is taken to be payable by the other insurer or other employer as compensation to the injured worker.

### **10ZD Second injury arrangements (NSW WIMWCA s 51)**

- (1) Arrangements may be entered into under this section to encourage the employment of injured workers by providing financial incentives to their employers in relation to insurance liabilities arising from further injuries to the workers.
- (2) An insurer who is liable to pay compensation to an injured worker may enter into an arrangement with a new employer (the *new employer*) of the injured worker providing for either or both of the following:
  - (a) for the insurer to indemnify the new employer in relation to the employer's liability to pay compensation to the injured worker under this Act;
  - (b) for the insurer to pay a wage subsidy to the new employer in relation to the worker's employment.
- (3) An arrangement under this section—
  - (a) applies for 6 months or, if a period is stated in the arrangement, that period; and
  - (b) if it provides for an indemnity—applies to all injuries or only to the injuries stated in the indemnity arrangement; and

- 
- (c) is subject to the conditions the insurer decides and the new employer agrees to.
  - (4) A claim for compensation for an injury to the worker to which an indemnity under this section applies is excluded from the claims experience of the new employer in working out the premium payable by the new employer for an insurance policy.
  - (5) This section applies only in relation to approved insurers.

### **10ZE Workplace rehabilitation (NSW WIMWCA s 52)**

- (1) An employer (other than a non-business employer) must establish a return-to-work program in relation to policies and procedures for the rehabilitation (including, if necessary, vocational rehabilitation) of injured workers of the employer.

Maximum penalty: 10 penalty units.

- (2) An employer's return-to-work program must not be inconsistent with the injury management program of the employer's insurer and is of no effect to the extent of any inconsistency.
- (3) A return-to-work program must—
  - (a) be established in accordance with guidelines (if any) issued by the Minister under section 10ZF; and
  - (b) be developed by the employer in consultation with the workers to whom it relates, or may relate, any industrial union of workers representing the workers and an approved rehabilitation provider; and
  - (c) be in writing displayed or notified at places of work of the workers to whom it relates or may relate.
- (4) A group of 2 or more employers may establish a single return-to-work program under this section for each member of the group if the employers are authorised in writing to do so by the Minister.

### **10ZF Return-to-work guidelines**

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(1) The Minister may, in writing, issue guidelines for the establishment of return-to-work programs.

(2) Guidelines are a disallowable instrument.

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

(3) In deciding guidelines for this section, the Minister may consult with the entities the Minister considers appropriate.

## Part 5.6 Compliance with chapter 5

### 10ZG Obligation of Minister

The Minister must monitor compliance by insurers with the requirements of this chapter.

### 10ZH Compliance by insurers (NSW WIMWCA s 55 (1))

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

### 10ZI Compliance by workers (NSW WIMWCA s 57)

- (1) A worker is not entitled to weekly compensation for a period when the worker unreasonably—
- (a) contravenes a requirement under this chapter (including under the worker's personal injury plan) after being asked in writing by the insurer to comply with the requirement; or
  - (b) fails to take part in or make a reasonable effort to take part in vocational rehabilitation or a return-to-work program; or
  - (c) fails to attend an assessment of the worker's employment prospects; or
  - (d) fails to undertake suitable alternative duties (if any) provided by the employer; or

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- (e) fails to take up an offer of suitable work for which the worker is qualified and that the worker can perform.
  - (2) A worker's entitlement to weekly compensation does not stop under this section until 2 weeks after the day, or latest day, the insurer gives written notice to the worker and to the Minister that the compensation will stop.
  - (3) The notice must be accompanied by a statement of the reasons for the entitlement stopping and the action that the insurer considers the worker must take to be entitled to the continuation, or resumption, of weekly compensation.
  - (4) The resumption of weekly compensation does not entitle the worker to weekly compensation for the period when the worker had no entitlement to weekly compensation.

### **10ZIA Unreasonableness in stopping payment**

- (1) This section applies if an insurer gives the worker and Minister notice under section 10ZI and stops the worker's weekly compensation.
- (2) If the Minister considers that stopping the weekly compensation may have been unreasonable, the Minister may do either or both of the following:
  - (a) ask the insurer, in writing, for further information about the stoppage;
  - (b) direct the insurer, in writing, not to stop paying the weekly compensation, or to continue to pay the weekly compensation, for a stated time that is not longer than 1 month.
- (3) If the Minister considers that stopping payment of the weekly compensation is unreasonable, the Minister may—
  - (a) tell the insurer so in writing; and
  - (b) direct the insurer, in writing, not to stop paying the weekly compensation, or to continue to pay the weekly compensation

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until the Minister otherwise directs or the claim is settled or decided.

- (4) The insurer must not, without reasonable excuse, contravene a direction under this section.

Maximum penalty: 10 penalty units.

### **10ZJ Liability not affected (NSW WIMWCA s 58)**

None of the following things done by an insurer or employer is an admission of liability by the employer or insurer under this Act or independently of this Act:

- (a) anything done under or for an injury management program or personal injury plan;
- (b) anything done in relation to the assessment of an injured worker for rehabilitation, retraining or employment or the provision or arrangement of services or other measures for the rehabilitation or suitable employment of injured workers (whether done under a return-to-work program or otherwise).

## **17 Sections 11 to 13**

*substitute*

## **Chapter 6 Claims**

### **Part 6.1 Making claims**

#### **11 Making claim for compensation** (NSW WIMWCA s 65 (1), (2) and (13))

- (1) A worker may claim compensation under this Act.
- (2) A claim for weekly compensation must be accompanied by a medical certificate from a doctor.



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- (3) Failure to make a claim under this Act does not prevent the recovery of compensation if it is found that the failure was caused by ignorance, mistake or other reasonable cause.

### **11A Claim for property loss or damage**

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

### **11B Medical certificates and claims for compensation** (NSW WIMWCA s 65 (3), (4) and (5))

- (1) To the extent that information or material has been given in the course of the making of a claim for compensation for an injury, it is not necessary to give the information or material when making any further claim for compensation in relation to the same injury.
- (2) A medical certificate required to accompany a claim for weekly compensation must include a statement of the doctor's opinion about—
- (a) the likelihood of the worker's employment being a substantial contributing factor to the injury; or
  - (b) whether the worker's condition is consistent with the worker's employment being a substantial contributing factor to the injury.

### **11C What if no medical certificate with doctor's opinion?**

- (1) This section applies if a claim is deficient because section 11B (2) has not been complied with.
- (2) If the insurer (or self-insurer) tells the worker in writing about the deficiency (including details of what is required to comply with section 11B (2)) as soon as possible (but in any case within 72

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hours) after receiving the claim, the claim is not considered to have been made until section 11B (2) is complied with.

- (3) However, if the insurer (or self-insurer) does not tell the worker in writing about the deficiency (including details of what is required to comply with section 11B (2)) within 72 hours after receiving the claim, the claim is taken to comply with section 11B (2).
- (4) Subsection (2) does not apply if the insurer (or self-insurer) waives the requirement for the claim to comply with section 11B (2).

### **11D Time for taking proceedings generally** (ACT WCA s 25 (1) and (3))

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

- (a) notice of the injury (an *injury notice*) was given as soon as practicable after the injury happened, and before the worker voluntarily left the employment in which the worker was injured; and
- (b) the claim for compensation was made—
  - (i) within 3 years after the injury happened; or
  - (ii) if the worker was not aware of the injury when it happened—within 3 years after the worker became aware of the injury; or
  - (iii) if the worker dies—within 3 years after the claimant became aware of the death.

*Note* Section 11H (No notice or defective or inaccurate notice) contains an exception to this regulation.

### **11E Time for making claim under pt 4.4**

- (1) A claim for compensation payable under part 4.4 (Compensation for permanent injuries) in relation to an injury may not be made earlier than 2 years after the injury.

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- (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 worker's imminent death.
  - (4) The worker's injury is taken to have stabilised if—
    - (a) the worker has returned to work for the worker's pre-incapacity weekly hours (the *previous work hours*) or longer; and
    - (b) the worker has been working at least the previous work hours for at least 3 months.
  - (5) However, the worker's injury may have stabilised even if the worker has not returned to work.

#### **11F When is a claim made?**

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

#### **11G The notice for an injury (ACT WCA s 25 (4))**

- (1) An injury notice must contain—
  - (a) the name and address of the injured worker; and
  - (b) the cause of the injury (in ordinary language); and
  - (c) the date and time the injury happened.

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- (2) The notice must be served on the employer or, if the worker has more than 1 employer, on the employer responsible for the workplace where the injury happened.

### **11H No notice or defective or inaccurate notice** (ACT WCA s 25 (2))

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

### **11I Admissibility of statements by injured workers**

- (1) A written statement in relation to a worker's injury given by the worker to the employer is admissible in evidence on behalf of the employer in a proceeding under this Act only if the employer gives the worker a copy of the statement at least 14 days before the proceeding is heard.
- (2) In this section:  
*employer* includes the employer's insurer.  
*insurer* means—
  - (a) an approved insurer; or
  - (b) the nominal insurer.

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**11J Action by employer in relation to claims (NSW WIMWCA s 69)**

- (1) If an employer receives a claim for compensation or another document in relation to a claim, the employer must, within 7 days after receiving the claim or document, forward it to the insurer that the employer believes is liable to indemnify the employer for the claim (the *liable insurer*).

Maximum penalty: 50 penalty units.

- (2) If the employer receives a written request from the liable insurer for further stated information in relation to the claim or document, the employer must, within 7 days after receiving the request, either—
- (a) give the insurer the requested information; or
  - (b) if the information is not in the employer's possession and is not reasonably obtainable by the employer—tell the insurer that in writing.

Maximum penalty: 50 penalty units.

- (3) If an employer has received an amount of compensation under this Act from an insurer, the employer must immediately pay the amount to the person entitled to the compensation.

Maximum penalty: 50 penalty units.

- (4) This section does not apply to an employer who is a self-insurer.
- (5) A person does not commit an offence by contravening this section if there was a reasonable excuse for the contravention.

## **Part 6.2 Time for accepting or rejecting claims**

### **12 Meaning of *given* to the insurer**

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For this part, a claim is *given* to the insurer if the claim is given to the insurer or the insurer is given notice of the claim by the employer or worker.

### **12A Claim accepted if not rejected within 28 days**

If the insurer does not reject a worker's claim for compensation under this Act within 28 days after the claim is given to the insurer—

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

### **12B Rejecting claims generally**

- (1) An insurer rejects a claim for compensation under this Act by written notice given to the worker and employer.
- (2) The claim is taken to be rejected when the notice is received by the worker and employer.
- (3) If the worker and employer do not receive the notice on the same day, the notice is taken to have been given on the day the notice is received by the last of them.
- (4) The notice must include the reason the insurer is rejecting the claim.
- (5) If the insurer rejects the claim 28 days or later after the claim is given to the insurer, the notice must include affidavit evidence about why the insurer is rejecting the claim.
- (6) For this section, a notice is taken not to contain the reason the insurer is rejecting the claim if it simply says the claim is being rejected for medical reasons without including the medical reasons.

### **12C Rejecting claim within 28 days**

- (1) If the insurer rejects the worker's claim within 28 days after the claim is given to the insurer, the insurer may—

- 
- (a) stop weekly compensation to the worker 2 weeks after the insurer rejects the claim; and
  - (b) stop payment of compensation mentioned under part 4.5 (Compensation for medical treatment, damage and other costs) for costs incurred 2 weeks or later after the insurer rejects the claim.

*Note* For how a claim is rejected, see s 12B.

- (2) However, the insurer is not entitled to reject the worker's claim within 28 days after the claim is given to the insurer only on the ground that the insurer has not had time to adequately assess the claim.

#### **12D Rejecting claims after 28 days but within 1 year**

If the insurer rejects the worker's claim 28 days or later, but not later than 1 year, after the claim is given to the insurer, the insurer may—

- (a) stop weekly compensation to the worker 8 weeks after the insurer rejects the claim; and
- (b) stop payment of compensation mentioned under part 4.5 (Compensation for medical treatment, damage and other costs) for costs incurred 8 weeks or later after the claim is rejected.

*Note* For how a claim is rejected, see s 12B.

#### **12E Rejecting claims from 1 year**

- (1) An insurer may reject a worker's claim for compensation 1 year or later after the claim is given to the insurer only with the leave of the Magistrates Court.
- (2) If the Magistrates Court gives leave to the insurer to reject the worker's claim for compensation—
  - (a) the insurer need not give the worker notice of the rejection if the worker, or the worker's lawyer, is present when the court gives leave for the insurer to reject the claim; and

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- (b) the insurer may stop paying weekly compensation—
  - (i) on the day stated by the court in the order giving leave to the insurer to reject the claim; or
  - (ii) 8 weeks after the worker gets notice of the rejection if no day is stated in the order.
- (3) For this section, the worker gets notice of the rejection—
  - (a) if the worker is present when the court gives leave to the insurer to reject the claim—on the day the court gives leave; or
  - (b) when the worker receives notice of the rejection from the insurer.

*Note* Court approved termination is dealt with under the regulations.

## Part 6.3 Liability on claims

### 12F Without prejudice payments

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

### 12G Liability on claim not accepted or rejected

- (1) If a worker makes a claim in relation to an injury, the insurer is liable to pay weekly compensation and compensation for costs in relation to the injury until the insurer rejects or settles the claim.
- (2) A payment under this section may not be recovered by the insurer.
- (3) However, the insurer is not liable to pay, and may recover from the employer, an amount that the employer is liable to pay under section 10Q (What if employer does not give notice of injury within time?).

### 12H Order for refund of overpayments of compensation (NSW WIMWCA s 68)



- (1) This section applies to a payment to a person (an *overpayment*), purportedly made because of an obligation arising under this Act, to which the person is not entitled under this Act.
- (2) However, this section only applies if the court before which a proceeding for an offence under section 26T (False claims etc) is taken against the person is satisfied on the balance of probabilities that the person has received an overpayment as a result or partly as a result of the act or omission that is alleged to constitute the offence.
- (3) The court may, on the application of the employer or insurer (whether or not the person is convicted of the offence), order the person to refund the amount of the overpayment to the person who made the payment.
- (4) Unless the compensation is payable under an award of a court, the refund may be deducted from future payments of compensation in accordance with the terms of the court's order.
- (5) Subsection (3) applies even if the compensation is weekly compensation that is payable under a direction of a conciliator.
- (6) This section does not limit any other right of recovery that a person may have against someone else in relation to an overpayment to the other person.

## Part 6.4 Settlement of claims

### 121 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 a worker under this Act; or
  - (b) a liability imposed on an employer under this Act.
- (2) However, this section does not apply to an agreement by a worker to commute an existing right to compensation for a compensable injury under this part.

**12J How worker may commute rights**

- (1) A worker 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 worker's entitlement to weekly compensation under part 4.3;
  - (b) the worker's entitlement to compensation for permanent injuries under part 4.4;
  - (c) the worker's entitlement to compensation for medical treatment, damage and other costs under part 4.5;
  - (d) an entitlement of the worker to compensation apart from this Act;
  - (e) any other amount.

**12K No assignment etc of payout of weekly compensation**  
(ACT WCA sch 4, cl 13)

A payout of weekly compensation may not—

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

**18 Section 15**

*substitute*

**15 Medical referees (ACT WCA s 15)**

- (1) The Minister may appoint 1 or more doctors to be medical referees for this Act.

- (2) The Minister may appoint a doctor to be a medical referee only if satisfied that the doctor has the experience and expertise to adequately perform the duties of a medical referee.
- (3) A medical referee must not act as medical referee in relation to an injury if the medical referee's services have been used as a doctor in relation to the injury by, or on behalf of, the employer, worker or insurer.
- (4) A person appointed to be a medical referee is to be paid the fees decided by the Minister for the exercise of the person's functions as a medical referee.

## 19 Part 2A

*substitute*

## Chapter 7 Vocational rehabilitation

### 15A Meaning of *approved rehabilitation provider* etc

- (1) In this chapter:

*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 by the Minister, including—
  - (a) the factors to be taken into account in deciding whether to approve rehabilitation providers; and
  - (b) the conditions that may be imposed on approvals; and
  - (c) how approvals may be renewed, suspended and revoked.

### 15B Meaning of *vocational rehabilitation* (ACT WCA s 15A, 15B)

- (1) In this chapter:

*vocational rehabilitation*, for the injured worker, means—

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- (a) the assessment of the needs of the worker for paragraph (b); and
  - (b) the provision of appropriate, adequate and timely services for the worker aimed at maintaining the worker in suitable employment or returning the worker 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.

### **15C Meaning of *protocol* in ch 7 etc (ACT WCA s 15A)**

- (1) In this chapter:
- protocol* means a protocol about vocational rehabilitation approved under the regulations.
- (2) The regulations may allow the Minister to approve a protocol about vocational rehabilitation.

### **15D Vocational rehabilitation (ACT WCA s 15C)**

- (1) If the worker has a compensable injury, the employer must provide the worker with vocational rehabilitation in accordance with this Act.
- Maximum penalty: 50 penalty units.
- (2) The provision of vocational rehabilitation to the worker is not taken to be an admission of liability for the worker's claim for compensation.
- (3) This section does not apply to a non-business employer.
- (4) The regulations may exempt employers from subsection (1), either completely or in prescribed circumstances.

### **15E False representation of approval**

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

Maximum penalty: 30 penalty units.

## **20 Sections 16 to 17D**

*substitute*

### **16 Meaning of *compulsory insurance policy***

(1) For this Act:

*compulsory insurance policy*, for the employer, means an insurance policy—

- (a) for an unlimited amount for any liability of the employer under this Act, or independently of this Act, for an injury to, or the death of, each Territory worker employed by the employer; and
- (b) that complies with this Act.

*Note* If a form is approved under s 29 (Approved forms) for a compulsory insurance policy, the form must be used.

(2) Subject to section 16C (2) (Compulsory insurance—employers) and section 17E (Cover notes), a cover note may be a compulsory insurance policy.

### **16A Approved insurers**

(1) The Minister may, in accordance with the regulations, approve an insurer for this Act.

(2) The regulations may prescribe the following:

- (a) the criteria for approving insurers;
- (b) the conditions that may be imposed on the approval of insurers;
- (c) the records to be kept by approved insurers, who the records are to be provided to and how they are to be provided;
- (d) how insurance premium calculations by approved insurers may be reviewed;

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- (e) how approved insurers' performance may be monitored and reviewed;
- (f) what and when approved insurers must report to the Minister;
- (g) how and why the approval of an insurer may be revoked or suspended.

### **16B Effect of revocation or suspension of approval**

- (1) If the approval of the insurer for this Act is revoked or suspended, section 16C (1) (which requires an employer 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
  - (b) affect the liability of the insurer under a pre-revocation policy; or
  - (c) affect the liability of the insurer under section 18H (Funds for payments by nominal insurer).
- (3) However, the regulations may prescribe circumstances in which (and when) a pre-revocation policy issued by an insurer whose approval has been revoked stops being a compulsory insurance policy.

### **16C Compulsory insurance—employers (ACT WCA s 17B (1), (1A))**

- (1) An employer, other than a self-insurer, must maintain a compulsory insurance policy with an approved insurer.

Maximum penalty:

- (a) for a non-business employer—50 penalty units; or

- 
- (b) for a 1st offence—50 penalty units; or
  - (c) for a 2nd or subsequent offence—
    - (i) if the person charged is an individual—250 penalty units, imprisonment for 2 years or both; or
    - (ii) if the person charged is a corporation—1 000 penalty units.
- (2) A cover note may be a compulsory insurance policy only if it is in force for not longer than 30 days and—
- (a) the employer maintained a compulsory insurance policy (other than a cover note) immediately before maintaining the cover note; or
  - (b) the employer was not an employer immediately before beginning to maintain the cover note; or
  - (c) the employer was a self-insurer immediately before beginning to maintain the cover note.
- (3) If 2 or more employers could become liable to pay compensation for the same worker, any of the employers may comply with subsection (1) in relation to the worker with a joint insurance policy for their joint liability.

#### **16D Liability of executive officers (ACT WCA s 17B (2A, 2B))**

- (1) If a corporation commits an offence against section 16C, each executive officer of the corporation also commits the offence.

Maximum penalty:

- (a) for a 1st offence—50 penalty units; or
  - (b) for a 2nd or subsequent offence—250 penalty units, imprisonment for 2 years or both.
- (2) It is a defence to a prosecution under subsection (1) if the executive officer establishes that the officer actively endeavoured to ensure that the corporation complied with section 16C.

**17 Effect of failure to maintain compulsory insurance on other insurance etc for this Act (ACT WCA s 17B (6))**

- (1) This section applies if—
  - (a) an employer, other than a self-insurer, fails to maintain a compulsory insurance policy; but
  - (b) the employer maintains an insurance policy (the *other policy*) for a liability under this Act.
- (2) The failure to maintain a compulsory insurance policy does not—
  - (a) annul the other policy; or
  - (b) affect the liability of the insurer under the other policy; or
  - (c) affect the liability of the insurer under section 18H (Funds for payment by nominal insurer).

**17A Nominal insurer entitled to triple premiums (ACT WCA s 17B (5))**

If an employer, other than a self-insurer or non-business employer, fails to maintain a compulsory insurance policy, the nominal insurer may recover as a debt from the employer an amount equal to triple the amount of the premiums that would have been payable to an approved insurer if the employer had maintained a compulsory insurance policy.

**17B Evidence of maintenance of compulsory insurance policy (ACT WCA s 17B (4))**

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

**17C Self-insurers (ACT WCA s 17C (1))**



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- (1) The Minister may, by written notice given to an employer, exempt the employer from complying with section 16C (1) (Compulsory insurance—employers) for a stated period.
  - (2) The regulations may make provision for or in relation to the following:
    - (a) how an employer may apply for an exemption;
    - (b) the criteria to be considered by the Minister when deciding whether to exempt an employer;
    - (c) conditions on exemptions;
    - (d) renewals of exemptions;
    - (e) revocation and suspension of exemptions.

#### **17D Compulsory insurance—insurers**

- (1) An approved insurer must not refuse to issue a compulsory insurance policy required by an employer for section 16C (1) (Compulsory insurance—employers).

Maximum penalty: 100 penalty units.

- (2) An approved insurer must not issue an insurance policy required by an employer for section 16C (1) that is not a compulsory insurance policy.

Maximum penalty: 100 penalty units.

- (3) It is not an offence under subsection (1) for an insurer to refuse to issue a compulsory insurance policy if—
  - (a) the employer has not paid for the policy; or
  - (b) the employer has not given the insurer information reasonably requested by the insurer in relation to the policy.

#### **17DA Cancellation**

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An approved insurer may cancel a compulsory insurance policy only in accordance with a protocol about cancellation.

Maximum penalty: 50 penalty units.

### **21 Cover notes Section 17E (1) and (2)**

*substitute*

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

Maximum penalty: 10 penalty units.

### **22 Section 18**

*substitute*

### **18 Information for insurers before renewal**

An employer (other than a non-business employer) applying to an insurer for the issue renewal of a compulsory insurance policy must give the insurer, in relation to the period (the *relevant period*) relevant to working out the premium payable for the issue renewal of the policy—

- (a) a certificate from a registered auditor stating the total wages paid in the relevant period by the employer to Territory workers employed by the employer; and
- (b) a statutory declaration setting out—
- (i) the determined categories of Territory workers employed by the employer in the period; and
  - (ii) the total wages paid to each category in the period; and
  - (iii) the number of paid and unpaid workers working for the employer in the period; and
  - (iv) the approximate amount of time each paid and unpaid worker worked for the employer in the period.

Maximum penalty:

- (a) for a 1st offence—50 penalty units;
- (b) for a 2nd or subsequent offence—
  - (i) if the person charged is an individual—250 penalty units, imprisonment for 2 years or both;
  - (ii) if the person charged is a corporation—1 000 penalty units.

*Note* A person who knowingly provides a statutory declaration that contains false information is guilty of an offence under this Act (see s 18AE).

### **18AA Information for insurers after end of policy**

If an employer (other than a non-business employer) has a compulsory insurance policy, the employer must, within 30 days after the end of the policy, give the insurer—

- (a) a certificate from a registered auditor stating the total wages paid by the employer to Territory workers in the period covered by the policy (the *policy period*); and
- (b) a statutory declaration setting out—
  - (i) the determined categories of Territory workers employed by the employer in the policy period; and
  - (ii) the total wages paid to each category in the policy period; and
  - (iii) the number of paid and unpaid workers working for the employer in the policy period; and
  - (iv) the approximate amount of time each paid and unpaid worker worked for the employer in the policy period.

Maximum penalty: 50 penalty units.

*Note* A person who knowingly provides a statutory declaration that contains false information is guilty of an offence under this Act (see s 18AE).

### 18AB Information for insurers about reporting period

- (1) If an employer (other than a non-business employer) has a compulsory insurance policy, the employer must, within 14 days after each reporting period, give the insurer a statutory declaration setting out—
- (a) the determined categories of Territory workers employed by the employer in the reporting period; and
  - (b) the total wages paid to each category in the reporting period; and
  - (c) the number of paid and unpaid workers working for the employer in the reporting period; and
  - (d) the approximate amount of time each paid and unpaid worker worked for the employer in the reporting period.

Maximum penalty: 50 penalty units.

*Note* A person who knowingly provides a statutory declaration that contains false information is guilty of an offence under this Act (see s 18AE).

- (2) In this section:

*reporting period*, in relation to the employer's compulsory insurance policy, means—

- (a) the period (the *first period*) of 6 months beginning on the first day of the policy; and
- (b) each successive period (the *successive period*) of 6 months following the first period; and
- (c) if the policy ends, or is cancelled, on a day other than the last day of the first period or a successive period—the period following the later of the first period or last successive period and ending on last day of the policy.

### 18AC Information for insurers after cancellation

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If an insurer cancels the compulsory insurance policy of an employer (other than a non-business employer), the employer must, within 14 days after the day the policy is cancelled, give the insurer a certificate from a registered auditor stating the total wages paid by the employer to Territory workers in the period from the start of the policy until the cancellation of the policy.

Maximum penalty: 50 penalty units.

### **18AD Offence by registered auditor**

A registered auditor must not knowingly supply false, misleading or incomplete information in a certificate provided for section 18AA (Information for insurers after end of policy), 18AB (Information for insurers about reporting period) or 18AC (Information for insurers after cancellation).

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

### **18AE Offence in relation to statutory declaration**

- (1) This section applies to a person who provides a statutory declaration under section 18 (Information for insurers before renewal), section 18AA (Information for insurers after end of policy) and section 18AB (Information for insurers about reporting period).
- (2) The person must not knowingly provide false information in the statutory declaration.

Maximum penalty:

- (a) for a 1st offence—
  - (i) if the person charged is an individual—250 penalty units, imprisonment for 2 years or both; or
  - (ii) if the person charged is a corporation—1 000 penalty units; or
- (b) for a 2nd or subsequent offence—

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- (i) if the person charged is an individual—1 000 penalty units, imprisonment for 10 years or both; or
- (ii) if the person charged is a corporation—10 000 penalty units.

*Note* Under the *Crimes Act 1900*, pt 8, it is an offence to aid, abet or incite another person to commit an offence, to conspire with the person to commit an offence, to receive or assist the person knowing they have committed an offence or to attempt to commit an offence. Part 8 applies to the offence under this section.

### **18AF Offence to employ etc after 2nd offence**

- (1) This section applies to a person who has been convicted of a 2nd or subsequent offence under the following sections:
  - section 16C (Compulsory insurance—employers)
  - section 16D (Liability of executive officers)
  - section 18 (Information for insurers before renewal)
  - section 18AA (Information for insurers after end of policy)
  - section 18AB (Information for insurers about reporting period)
  - section 18AC (Information for insurers after cancellation).
- (2) The person must not employ a Territory worker, or be an executive officer of a corporation that employs a Territory worker, for a period of 5 years from the day the person is, or is last, convicted of an offence mentioned in subsection (1).

Maximum penalty: imprisonment for 5 years.

## **23 Section 18F**

*substitute*

### **18F Intervention by nominal insurer**

- (1) This section applies to a person (the *alleged employer*)—
  - (a) against whom a claim (the *claim*) for compensation has been made; and

- (b) who is not a self-insurer; and
  - (c) who is not a party to a compulsory insurance policy that applies to the claim.
- (2) The alleged employer must, not later than 48 hours after the claim is made, give the nominal insurer a copy of the claim.
- Maximum penalty: 10 penalty units.
- (3) The alleged employer must not make an agreement or admission in relation to the claim unless the nominal insurer consents.
- Maximum penalty: 20 penalty units.
- (4) The nominal insurer is entitled to intervene in any arbitration proceeding on the claim as a party.
- (5) The nominal insurer has the same right of objection to arbitration by a committee as the employer has under the regulations.

#### **18FA Nominal insurer may act**

The nominal insurer may treat a claim for compensation as having been made against the nominal insurer under section 18C (Claims for payment by nominal insurer) if the nominal insurer—

- (a) receives a copy of the claim under section 18F; or
- (b) is otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the claim.

## **24 Section 18G**

*substitute*

### **18G Effects of payment by nominal insurer**

- (1) If the nominal insurer pays an amount under this Act in relation to a liability of an employer—
- (a) the payment operates, to the extent of the payment, to discharge the liability of the employer; and

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- (b) an amount equal to 3 times the amount of the payment is a debt payable by the employer to the nominal insurer, and may be sued for and recovered in a court of competent jurisdiction; and
  - (c) the nominal insurer has the right of subrogation in relation to any right that the employer has against anyone in relation to the occurrence that caused the liability of the employer.
- (2) Subsection (1) (b) does not apply in relation to a non-business employer.

### **25 New section 21AA**

*after section 21, insert*

#### **21AA Regulations to allow Minister to authorise people**

The regulations may—

- (a) allow the Minister to authorise people with accounting or auditing skills to examine records of wage estimates, evidence supporting wage estimates and records of wages paid; and
- (b) prescribe the circumstances in which the people authorised may enter premises to examine the records.

### **26 Sections 23D and 23E**

*substitute*

#### **23D Inspectors**

- (1) The chief executive may appoint, in writing, 1 or more inspectors for this Act or a provision of this Act.

*Note* **Chief executive** means the chief executive of the administrative unit responsible for this section (see *Legislation Act 2001*, s 163 (2) (a)).

- (2) A person must not be authorised under subsection (1) unless—
- (a) the person is an Australian citizen or a permanent resident of Australia; and



- 
- (b) the chief executive has certified in writing that, after appropriate inquiry, the chief executive is satisfied that the person is a suitable person to be authorised, having regard in particular to—
    - (i) whether the person has any criminal convictions; and
    - (ii) the person's employment record; and
  - (c) the person has satisfactorily completed adequate training to exercise the powers of an inspector proposed to be given to the person.

### **23E Identity cards**

- (1) The chief executive must issue an inspector with an identity card that states the person is an inspector for this Act, or stated provisions of this Act, and shows—
  - (a) a recent photograph of the person; and
  - (b) the name of the person; and
  - (c) the date of issue of the card; and
  - (d) a date of expiry for the card; and
  - (e) anything else prescribed under the regulations.
- (2) A person who ceases to be an inspector must return his or her identity card to the chief executive as soon as practicable, but no later than 7 days after ceasing to be an inspector.

Maximum penalty (subsection (2)): 1 penalty unit.

### **27 New section 23J**

*insert*

### **23J Obstruction**

A person must not, without reasonable excuse, obstruct or hinder an inspector in the exercise of the inspector's functions under this Act.

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

## 28 New chapter 13

*insert*

# Chapter 13 Notice and appeals

## 26RA Notice of reviewable decisions to be given to affected people

(1) In this chapter:

*reviewable decision* means a decision made by the Minister that is prescribed under the regulations.

(2) If the Minister makes a reviewable decision, the Minister must give written notice of the decision to each person affected by the decision.

(3) The notice must be in accordance with the requirements of the code of practice in force under of the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

## 26RB Review by administrative appeals tribunal of reviewable decisions

A person may apply in writing to the administrative appeals tribunal for review of a reviewable decision within 28 days after receiving notice of the decision.

## 29 Sections 26S to 27B

*substitute*

## 26RC Confidentiality

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

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

## **26S Time for beginning prosecutions**

- (1) A prosecution for an offence against 1 of the following sections may be begun within 5 years after the commission of the offence:
  - section 16C (Compulsory insurance—employers)
  - section 18 (Information for insurers before renewal)
  - section 18AA (Information for insurers after end of policy)
  - section 18AB (Information for insurers about reporting period)
  - section 18AC (Information for insurers after cancellation).
- (2) A prosecution for an offence against any other provision of this Act may be begun within 1 year after the commission of the offence.
- (3) However, a prosecution for an offence against this Act committed before the commencement of the *Workers Compensation Amendment Act 2001*, section 29 may be begun within 2 years after the commission of the offence.
- (4) Subsection (3) and this subsection expire 2 years after the commencement of this section.

## **26T False claims etc (NSW WIMWCA s 67)**

- (1) A person must not make a statement knowing that it is false or misleading in a material particular—
  - (a) in a notice given by the person under this Act; or
  - (b) in a claim for compensation made by the person; or
  - (c) in a medical certificate or other document that relates to a claim for compensation; or
  - (d) when giving information to someone about a claim for compensation (whether the information is given by the person who made the claim or not).

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

- (2) This section does not apply to statements—
  - (a) made in documents filed, or information given, in a court proceeding; or
  - (b) made in a document or information if the person who made the statement did not know that the document or information was to be given in relation to a claim for compensation.
- (3) This section applies to a statement even if it has been verified by statutory declaration.

## 26U Acts and omissions of representatives

- (1) In this section:

*representative* means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

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

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) This section applies to a prosecution for a defined offence.

*Note* Defined offence is defined in the dict.

- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
  - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and

- (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (3) or (4).

## **27 Criminal liability of officers of corporation**

- (1) If a corporation commits an offence against this Act (other than against section 16C (Compulsory insurance—employers)), an executive officer of the corporation—
    - (a) commits the offence; and
    - (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for the commission of the offence by an individual.
- Note* Section 16D deals with the liability of executive officers if a corporation commits an offence against s 16C.
- (2) It is a defence to a prosecution for an offence against subsection (1) that—
    - (a) the defendant exercised due diligence to prevent the corporation from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the corporation; or
    - (b) an officer or employee of the corporation in the defendant's position could not reasonably have been expected to know of the contravention; or

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- (c) the corporation would not have been found guilty of the offence because it could have established a defence available to it for the offence.
- (3) An executive officer may, under subsection (1), be prosecuted for and convicted of an offence whether or not the corporation has been prosecuted for or convicted of the offence.

### 27A Minister must take advice

- (1) The Minister must ask for, and take into consideration, the advice of the OH&S Council in relation to the development of regulations for this Act.
- (2) To prevent doubt—
  - (a) it is a function of the OH&S Council to advise the Minister on matters relating to workers compensation; and

*Note* This function is given to the OH&S Council under the *Occupational Health and Safety Act 1989*, s 10 (1) (a) (ii).

- (b) the OH&S Council may set up an advisory committee, made up of people with suitable expertise, to help it in the exercise of this function.

*Note* The power to set up an advisory committee if necessary to assist in the exercise of a function is given to the OH&S Council under the *Occupational Health and Safety Act 1989*, s 25 (1).

#### Examples of suitable expertise

Legal or medical expertise.

- (3) In this section:

*OH&S Council*—see the *Occupational Health and Safety Act 1989*, section 5 (1), definition of *council*.

### 27B Rules of court

The Executive may make rules in relation to procedure for this Act.

### 27C Directions about procedure

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

(2) A direction is a notifiable instrument.

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

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

### **27CA References to Workers' Compensation Act**

In any Act, statutory instrument or document, a reference to the *Workers' Compensation Act 1951* is a reference to this Act.

### **30 Regulation-making power Section 30 (2) and (3)**

*substitute*

- (2) The regulations may make provision in relation to the following:
- (a) the procedure for the medical examination of injured workers;
  - (b) the functions of medical referees appointed under this Act;
  - (c) what compulsory insurance policies must, and must not, include;
  - (d) how the performance of brokers and agents in relation to workers compensation in the Territory may be monitored;
  - (e) the maximum fees and expenses that may be required for matters dealt with under this Act in relation to the following:
    - (i) medical examinations or medical treatment;
    - (ii) legal services;
    - (iii) retraining services;

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- (iv) investigative services;
  - (f) fees and expenses that may not, or may not for a period, be claimed from a worker for a service provided in relation to a compensable injury;
  - (g) the benefits payable to injured workers;
  - (h) the accreditation of people to act as injury managers;
  - (i) arbitration of matters and questions arising under this Act, including provision for the exclusion or modification of the *Commercial Arbitration Act 1986* in its application to such an arbitration;
  - (j) protocols that may be approved by the Minister for this Act and how they may be approved;
  - (k) the approval of brokers for this Act, including—
    - (i) the factors to be taken into account in deciding whether to approve brokers; and
    - (ii) the conditions that may be imposed on approvals; and
    - (iii) how approvals may be renewed, suspended and revoked.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

### **31 Part 8**

*omit*

### **32 New chapter 15**

*insert*

## **Chapter 15 Transitional**

### **32 Definitions for ch 15**



In this chapter:

*the amendment Act* means the *Workers Compensation Amendment Act 2001*.

*the current Act* means the *Workers Compensation Act 1951*, as in force after the commencement of the amendment Act.

*the previous Act* means the *Workers' Compensation Act 1951*, as in force immediately before the commencement of the amendment Act.

### **33 What injuries does this Act apply to?**

- (1) The current Act applies only to injuries that happen on or after the commencement of the amendment Act.
- (2) However, if the worker first became aware that the worker received an injury after the commencement of the amendment Act, the injury is, for this chapter, taken to have happened when the worker became aware of the injury.
- (3) Also, if an injury (the *original injury*) that happened before the commencement of the amendment Act is aggravated after the commencement, the current Act applies to the aggravation as if the original injury were an injury within the meaning of the current Act.

### **34 What happens to injuries before the commencement of the amendment Act?**

The previous Act continues to apply to injuries that happened before the commencement of the amendment Act.

### **35 Determined categories of workers**

- (1) This section applies if, immediately before the commencement of the amendment Act, a determination by the Minister under the previous Act, section 6B (Determined categories of workers) was in force.

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- (2) The determination is taken to be a determination under the current Act, section 4A (3) (Who is a *worker*?).

### 36 Approved insurers

- (1) An insurer (the *previously approved insurer*) that was an approved insurer under the previous Act immediately before the commencement of the amendment Act is taken to be an approved insurer under the current Act.
- (2) However, the approval of the previously approved insurer under the current Act ends 6 months after the commencement of the amendment Act, because of the operation of this section.
- (3) Subsection (2) applies to the approval irrespective of the terms of the approval under the previous Act.

### 37 Exempt employers

- (1) A person who was an exempt employer immediately before the commencement of the amendment Act is taken to have been exempted under the current Act, section 17C (Self-insurers).
- (2) However, the exemption of the person under section 17C ends 6 months after the commencement of the amendment Act.
- (3) Subsection (2) applies to the exemption irrespective of the terms of the exemption under the previous Act.

### 38 Modification of ch 15's operation

The regulations may modify the operation of this chapter to make provision with respect to any matter that is not already, or is not (in the Executive's opinion) adequately, dealt with in this chapter.

### 39 Expiry of ch 15

This chapter expires 2 years after it commences.

*Note* Transitional provisions are usually of transitional effect. They are kept with the original provisions for a limited time to ensure people are

aware of them. However, the expiry of transitional provisions does not end their effect (see *Legislation Act 2001*, s 88).

### 33 Schedules 1 to 4

*substitute*

## Schedule 1 Compensation for permanent injuries

(see s 8L and s 8O)

column 1 item	column 2 nature of injury	column 3 % of maximum amount payable
	<b>Speech loss</b>	
1	loss of power of speech	60
	<b>Sensory loss</b>	
2	loss of sense of taste or smell	17
3	loss of senses of taste and smell	34
	<b>Hearing loss</b>	
4	loss of hearing of both ears	65
5	loss of hearing of 1 ear	20
	<b>Loss of vision</b>	
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
	<b>Arm injuries</b>	
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

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column 1 item	column 2 nature of injury	column 3 % of maximum amount payable
	<b>Hand injuries</b>	
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
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
	<b>Leg injuries</b>	
33	loss of either leg at or above knee	75
34	loss of either leg below knee	70
	<b>Foot injuries</b>	
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
	<b>Bowel injury</b>	
40	permanent loss of bowel function	65
	<b>Loss of sexual organs etc</b>	
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
	<b>Brain damage</b>	
45	permanent brain damage if not, or not completely an	100

column 1 item	column 2 nature of injury	column 3 % of maximum amount payable
	injury otherwise compensable under this schedule	
	<b>Permanent impairment of back, neck, pelvis</b>	
46	permanent impairment of back	60
47	permanent impairment of neck	40
48	permanent impairment of pelvis	15
	<b>Disfigurement</b>	
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 injury otherwise compensable under this schedule	50
	<b>Disease</b>	
51	HIV infection (Human Immunodeficiency Virus infection)	100
52	AIDS (Acquired Immune Deficiency Syndrome)	100

## Dictionary

(see s 1A)

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

**approved insurer** means an insurer approved by the Minister under section 16A (Approved insurers).

**approved rehabilitation provider**, for chapter 7 (Vocational rehabilitation)—see section 15A (Meaning of *approved rehabilitation provider* etc).

**average pre-incapacity weekly earnings** means earnings worked out under—

- (a) for a worker who is not a contractor—section 5H (Working out average pre-incapacity weekly earnings for non-contractor); or
- (b) for a worker who is a contractor—section 5I (Working out average pre-incapacity weekly earnings for contractor).

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***average pre-incapacity weekly hours*** means hours worked out under—

- (a) for a worker who is not a contractor—section 5J (Working out average pre-incapacity weekly hours for non-contractor); or
- (b) for a worker who is a contractor—section 5K (Working out average pre-incapacity weekly hours for contractor).

***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 5G.

***boilermakers deafness*** includes deafness of a similar origin.

***child***, in relation to a worker, means an unmarried child of the worker who is—

- (a) younger than 16; or
- (b) a full-time student.

***compensable injury*** means an injury in relation 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.

***compensation for costs***, for a worker, means compensation to which the worker is entitled under part 4.5 (Compensation for medical treatment, damage and other costs).

***compulsory insurance policy***—see section 16 (Meaning of *compulsory insurance policy*).

***cpi indexed***—see section 5G.

***deductible proportion***, for part 4.4 (Compensation for permanent injuries)—see section 8X (1) (Deduction for previous injury or pre-existing condition).

***dependant***, of a dead worker, means an individual—

- 
- (a) who was totally or partly dependent on the worker's earnings on the day of the worker's death or who would, apart from the worker's incapacity because of the injury, have been so dependent; and
  - (b) who was—
    - (i) a member of the worker's family; or
    - (ii) a person to whom the worker acted in place of a parent or who acted in place of a parent for the worker.

***determined categories***, of Territory workers, means the categories of workers determined by the Minister under section 4A (3) (Who is a *worker*?).

***employer***—

- (a) see section 3 (meaning of *employer*); and
- (b) for chapter 5 (*Injury management process*)—see section 10J.

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

***full-time student*** means an individual who—

- (a) is at least 16 years old but younger than 25; and
- (b) is receiving full-time education at a secondary or tertiary educational institution.

***given*** to the insurer, for part 6.2 (Time for accepting or rejecting claims)—see section 12.

***incapacity date***, for a worker, means—

- (a) the date of the beginning of the period of the worker's incapacity for work; or

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- (b) if the worker has been incapacitated for work because of the same injury for a number of separate periods—the date of beginning of the last period of incapacity; or
- (c) if the worker is dead and the death was not immediately preceded by a period of incapacity for work in relation to which the worker received compensation under this Act—the date of the worker’s death.

*initial loss*, for part 4.4 (Compensation for permanent injuries)—see section 8X (1) (Deduction for previous injury or pre-existing condition).

*injured worker*, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

*injury*—see section 2A (Meaning of *injury*).

*injury management*, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

*injury management program*, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

*injury notice*—

- (a) for chapter 5 (Injury management process)—see section 10O (2) (Early notification of workplace injury);
- (b) for chapter 6 (Claims)—see section 11D (Time for giving injury notice).

*insurer*, for chapter 5 (Injury management process), means—

- (a) an approved insurer or a self-insurer; or
- (b) if there is more than 1 employer of the worker—see section 10J.

*loss*, for chapter 4 (Entitlements to compensation)—see section 8L.

*maximum loss amount*, for part 4.4 (Compensation for permanent injuries)—see section 8N.



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***medical referee*** means a medical referee appointed under section 26RD.

***medical treatment*** means—

- (a) an examination, test or analysis, conducted by or under the direction, or at the request, of a doctor to diagnose an injury; or
- (b) medical or surgical treatment by a doctor; or
- (c) dental treatment by a dentist or a dental prosthetist; or
- (d) chiropractic treatment by a chiropractor; or
- (e) treatment by a psychologist; or
- (f) therapeutic treatment by a masseur, osteopath, physiotherapist, remedial kinesiologist or speech therapist; or
- (g) therapeutic treatment given on referral by a doctor or dentist; or
- (h) the taking of x-rays; or
- (i) the provision, repair or replacement of contact lenses, crutches, prostheses, spectacles or other artificial aids; or
- (j) a consultation, examination, therapeutic treatment or other service reasonably rendered in relation to a treatment mentioned in paragraph (c), (d), (f), (g), (h) or (i); or
- (k) treatment and maintenance as a patient at a hospital; or
- (l) the provision of nursing attendance, medicines, medical and surgical supplies and curative apparatus in a hospital or otherwise.

***nominated treating doctor***, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

***non-business employer*** means an employer who employs the worker other than for work that is for (or incidental to) the employer's trade or business.

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***partially incapacitated***—see section 4 (Meaning of *partially incapacitated*).

***payment*** includes a non-monetary payment.

***pension age***, for a worker—see the *Social Security Act 1991* (Cwlth), section 23 (5A), (5B), (5C) and (5D).

***personal injury plan***, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

***protocol***—

- (a) for chapter 7 (Vocational rehabilitation)—see section 15C (Meaning of *protocol* for ch 7 etc); or
- (b) means a protocol, approved in accordance with the regulations, prescribing how certain activities under this Act should be performed.

***registered agreement*** means an agreement registered under section 10B (Registration of agreements for compensation).

***registered auditor*** means an auditor registered under the Corporations Act.

***return-to-work program*** means a program mentioned in section 10ZE (Workplace rehabilitation).

***reviewable decision***, for chapter 13 (Notice and appeals)—see section 26RA (Notice of reviewable decisions to be given to affected people).

***rules*** means the rules made under this Act.

***self-insurer*** means an employer who is exempted under section 17C (Self-insurers).

***single loss amount***, for part 4.4 (Compensation for permanent injuries)—see section 8M.

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

*substantial* means real, actual or material.

*Territory worker* means a worker of the Territory under section 7A (Compensation limited to Territory workers).

*totally incapacitated*—see section 3A (Meaning of *totally incapacitated*).

*vocational rehabilitation*, for chapter 7 (Vocational rehabilitation)—see section 15B (Meaning of *vocational rehabilitation*).

*weekly compensation*, for a worker, means compensation to which the worker is entitled under section 8C (Totally incapacitated workers), section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date).

*worker*—see chapter 3 (Meaning of worker).

*workplace injury*, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

## 34 Workers Compensation Act—renumbering

*renumber provisions when Act next republished under Legislation Act 2001*

# Schedule 1 Consequential amendments

(see s 3)

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**[1.1] Section 6 (1) (definitions of *approved insurer, base figure, compensation, court, dependant, determined categories of workers, employer, employer's insurer, exempt employer, Index number, injury, medical treatment, outworker, overtime, prescribed insurance policy*)**

*omit*

**[1.2] Section 6 (1) (definition of *professional sporting activity*)**

*omit*

but does not include an activity referred to in subsection (4B), (4C) or (4D);

**[1.3] Section 6 (1) (definition of *registered auditor*)**

*omit*

**[1.4] Section 6 (1) (definitions of *worker, worker of this Territory*)**

*omit*

**[1.5] Section 6 (1) (definitions, as amended by this schedule)**

*relocate the definitions to the dictionary*

**[1.6] Remainder of section 6**

*omit*

**[1.7] Sections 6A and 6B**

*omit*

**[1.8] Section 7A (1)**

*substitute*

- (1) An employer is liable to pay compensation only in relation to a worker of the Territory.

**[1.9] Section 7A (4) (c)**

*omit*

respect of

*substitute*

relation to

**[1.10] Section 7A (5)**

*omit*

**[1.11] Section 7B**

*substitute*

**7B Injury outside Australia**

Compensation is payable in relation to an injury to a Territory worker suffered while the worker is outside Australia only if compensation would be payable in relation to the injury if the worker suffered the injury in Australia.

**[1.12] Section 9**

*relocate as section 5N*

**[1.13] Section 9AA**

*omit*

**[1.14] Sections 9A and 9B**

*relocate as sections 5O and 5P*

**[1.15] Section 14**

*relocate after section 5 (as inserted by this Act), as section 5AA*

**[1.16] Section 15**

*relocate as section 26RD*

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### **[1.17] Part 3, heading**

*renumber as chapter 8*

### **[1.18] Section 18A (1)**

*substitute*

(1AA) This section applies to the following:

- (a) an approved insurer;
- (b) a self-insurer;
- (c) if an approved insurer or employer is a corporation—an officer of the corporation on behalf of the corporation.

(1) The Minister may, by written notice given to a person to whom this section applies, require the person to give to the Minister, within the reasonable time stated in the notice—

- (a) details of the number of injuries for which compensation has been paid during the period stated in the notice and the total compensation paid during that period; and
- (b) any other details relating to the operation of this Act stated in the notice.

### **[1.19] Section 18E (2)**

*omit*

schedule 4

*substitute*

the regulations

### **[1.20] Section 18EA (7) (b)**

*omit*

(other than an Act)

**[1.21] Section 18H (2) and (3)**

*omit*

exempt employers

*substitute*

self-insurers

**[1.22] Section 18H (4)**

*substitute*

- (4) In making an apportionment under subsection (3), the nominal insurer must have regard as far as practicable to—
- (a) the premium incomes received by each approved insurer in relation to compulsory insurance policies in the financial year before the occurrence; and
  - (b) the premium that would have been payable by each self-insurer if the self-insurer had obtained a compulsory insurance policy for that financial year (or the part of that financial year for which the self-insurer was a self-insurer).

**[1.23] Section 18H (5)**

*omit*

exempt employer

*substitute*

self-insurer

**[1.24] Section 18H (5)**

*omit*

or employer

*substitute*

or self-insurer

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### [1.25] Section 18H (6)

*omit*

exempt employer

*substitute*

self-insurer

### [1.26] Section 18H (7)

*omit*

exempt employers

*substitute*

self-insurers

### [1.27] Section 20

*substitute*

## 20 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.

### [1.28] Section 20AA

*omit*

prescribed

*substitute*

compulsory

### [1.29] Section 20A

*omit*



**[1.30] Section 21**

*substitute*

**21 Workers' rights to information (ACT WCA s 21)**

- (1) If a Territory worker who is or has been employed by an employer asks the employer for the name and address of the person who was the employer's approved insurer on a stated date, the employer must—
  - (a) if the employer was not a self-insurer on that date—tell the worker the name and address of the approved insurer, or each approved insurer, who issued a compulsory insurance policy to the employer that was current on that date; or
  - (b) if the employer was a self-insurer on that date—tell the worker that fact.

Maximum penalty: 20 penalty units.

- (2) An employer must keep displayed, in accordance with subsection (3), a notice containing a summary of the requirements of this Act for making compensation claims, in the form approved by the Minister under section 29 (Approved forms) for the notice, and stating—
  - (a) that claim forms for compensation are available from the employer on request and free of charge; and
  - (b) if the employer is a party to a compulsory insurance policy—the approved insurer's name and address; and
  - (c) if the employer is a self-insurer—that the employer is exempt from the requirement to obtain insurance under this Act.

Maximum penalty: 10 penalty units.

- (3) The employer must display the notice in a conspicuous place so that it can be conveniently read by each Territory worker employed by the employer.

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- (4) An employer must ensure that claim forms approved by the Minister under section 29 (Approved forms) are available during business hours to each Territory worker who is or has been employed by the worker on request and free of charge.

Maximum penalty: 10 penalty units.

### **[1.31] Part 4**

*renumber as chapter 9*

### **[1.32] Section 21A**

*omit*

*Part*

*substitute*

*chapter*

### **[1.33] Section 21A, definition of *compensation***

*omit*

### **[1.34] Section 21B**

*omit*

in respect of

*substitute*

in relation to

### **[1.35] Section 21B**

*omit*

Part

*substitute*

chapter

**[1.36] Sections 22, 23 and 23A**

*omit*

in respect of

*substitute*

in relation to

**[1.37] Section 23A (4) (b)**

*substitute*

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

**[1.38] Part 5**

*renumber as chapter 10*

**[1.39] Section 23C, heading**

*omit*

pt 5

*substitute*

ch 10

**[1.40] Section 23C**

*omit*

Part

*substitute*

chapter

**[1.41] Section 23F**

*substitute*

**23F Provision of information to inspectors**

## Endnotes

- (1) An inspector may, by written notice given to an employer, require the employer to give to the inspector, within 28 days after the day the notice is given to the employer—
  - (a) a certificate from a registered auditor stating the total wages paid, in the period stated in the notice, by the employer to Territory workers employed by the employer; and
  - (b) a statutory declaration setting out—
    - (i) the determined categories of Territory workers employed by the employer in the period; and
    - (ii) the total wages paid to each category in the period.
- (2) An inspector may, by written notice given to an employer, require the employer, in the time and way stated in the notice—
  - (a) to produce for inspection any compulsory insurance policy to which the employer is a party; and
  - (b) to provide the related information (if any) that the inspector requires in the notice.
- (3) A registered auditor must not knowingly supply false, misleading or incomplete information in a certificate given to an inspector under subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (4) An employer must not, without reasonable excuse, fail to comply with a notice given to the employer under subsection (1) or (2).

Maximum penalty: 50 penalty units.
- (5) In this section:

*employer* includes a person whom an inspector believes, on reasonable grounds, is or has been an employer.

**[1.42] Part 6**

*renumber as chapter 11*

**[1.43] Section 24**

*omit*

Schedule 4

*substitute*

the regulations

**[1.44] Section 25**

*omit*

**[1.45] Part 6A**

*omit*

**[1.46] Part 6B**

*renumber as chapter 12*

**[1.47] Section 26G**

*omit*

Part

*substitute*

chapter

**[1.48] Section 26G, definition of *on-the-spot fine***

*substitute*

*on-the-spot fine*, in relation to a prescribed offence, means the fine prescribed under the regulations for the offence.

**[1.49] Sections 26H, 26J, 26L, 26P, 26Q and 26R**

*omit*

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Part

*substitute*

chapter

### **[1.50] Part 7**

*renumber as chapter 14*

### **[1.51] Section 27D (1) and (2)**

*omit*

exempt employers

*substitute*

self-insurers

### **[1.52] Section 27D (3)**

*substitute*

- (3) In making an apportionment under subsection (2) for a financial year, the Minister must have regard as far as practicable to—
- (a) the premium incomes received by each approved insurer in relation to compulsory insurance policies in the financial year; and
  - (b) the premium that would have been payable by each self-insurer if the self-insurer had obtained a compulsory insurance policy for the financial year (or the part of the financial year for which the self-insurer was a self-insurer).

### **[1.53] Section 27D (4)**

*omit*

exempt employer

*substitute*

self-insurer

**[1.54] Section 27D (4)**

*omit*

or employer

*substitute*

or self-insurer

**[1.55] Section 27D (5)**

*omit*

exempt employer

*substitute*

self-insurer

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