



Australian Capital Territory

Workers Compensation Act 1951

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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* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 22 March 2004. It also includes any amendment, repeal or expiry affecting the republished law to 22 March 2004.

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

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- authorised republications to which the *Legislation Act 2001* applies
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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 does not include 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.

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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 is—

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



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Australian Capital Territory

Workers Compensation Act 1951

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

Chapter 1 Preliminary

1 Name of Act

This Act is the *Workers Compensation Act 1951*.

Chapter 2 Interpretation generally

2 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 4 (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)).

3 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:

- 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.

U **3A Offences against Act—application of Criminal Code etc**

4 Meaning of *injury* (ACT WCA s 6 (1), (1A))

- (1) In this Act:

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

- (2) In 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.

5 Meaning of *employer* (ACT WCA s 6 (1))

In this Act:

employer includes—

- an entity; and
- the legal personal representative of a dead employer; and
- 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.

6 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 35 (When is a worker taken to be totally incapacitated?).

7 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—

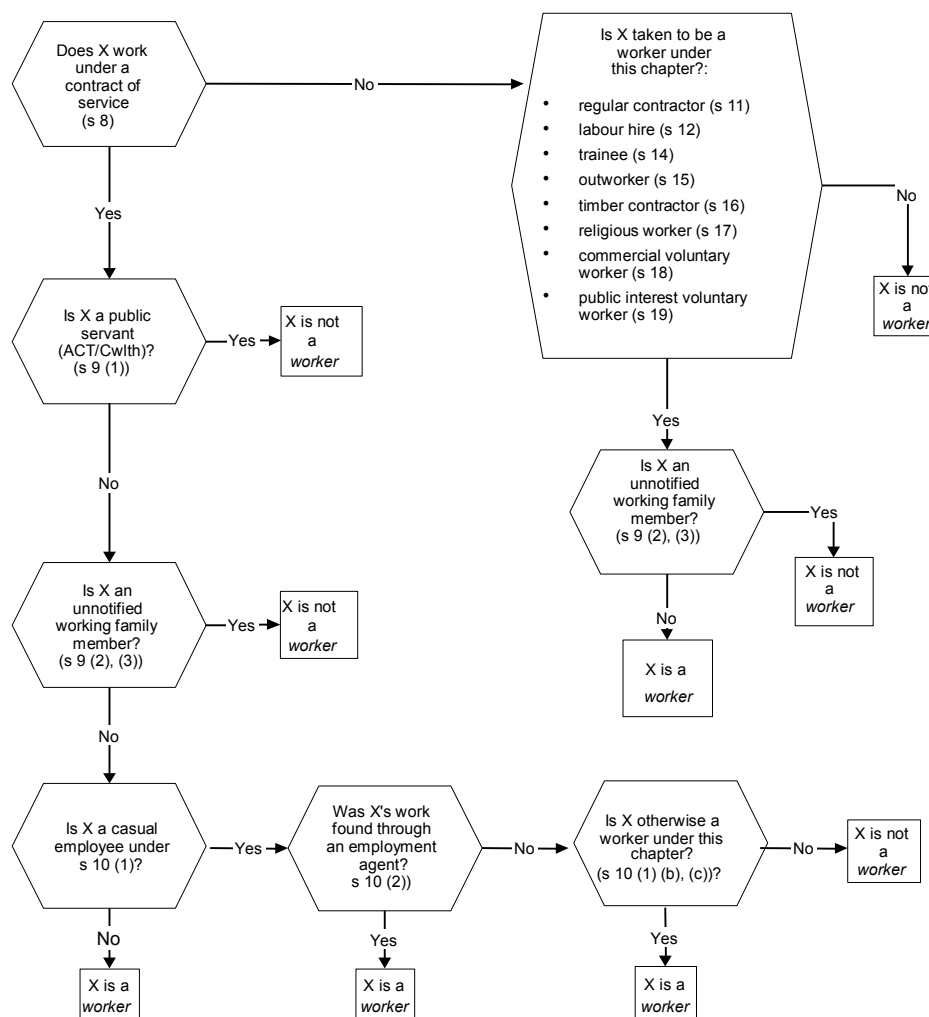
- (a) cannot do all the work the worker could do before the injury;
and
- (b) is not totally incapacitated.

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 14 (Trainees), s 17 (Religious workers), s 18 (Commercial voluntary workers) and s 19 (Public interest voluntary workers). Trainees and religious workers may or may not be paid for their labour. Voluntary workers (under s 18 and s 19) are those that are paid only for expenses (if that).

Note 3 Subcontracting and labour hire (effect of s 13)

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 13, 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 12). 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.

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 12) 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 13 (2) and (4)). If the principal pays compensation to the worker, the principal may claim repayment from the employer (see s 13 (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.

U 8 Who is a *worker*? (ACT WCA s 6 (1) (def of *worker*), (7), s 6B)

- (1) In 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:
 - (a) section 156 (b) (i) (Information for insurers before renewal);
 - (b) section 157 (b) (i) (Information for insurers after end of policy);
 - (c) section 158 (1) (a) (Information for insurers about reporting period);
 - (d) section 190 (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*.

9 Who is not a *worker*? (ACT WCA s 6 (1) (def of *worker*), (2))

- (1) In 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) In 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.

10 Casuals not employed for trade or business (ACT WCA s 6 (1) (def of **worker, par (a)), (3C))**

- (1) In 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 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 11 (Regular contractors and casuals);
 - (c) section 17 (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

- 3 A gardener regularly 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)).
- 4 A babysitter irregularly employed by the parents of young children who is engaged through an employment agent. The babysitter is taken to be a **worker** employed by the agent rather than the parents (see s (1) (a) and s (2)).
- 5 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 11 (Regular contractors and casuals)—see s (1) (b).

11 Regular contractors and casuals (CW WRR reg 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 10 (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 10 (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;
 - (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**7 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.

8 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.

9 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.

10 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.

11 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.

12 Irregular casual worker

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 10 (2).)

12 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 13 (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 13 (3)). See also note 3 at the beginning of this chapter.

13 Subcontracting

- (1) If 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 that the principal would have been liable to pay if that worker had been immediately employed by the principal.
- (2) If 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) If 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 14 **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.
- (3) However, an individual is taken not to be a *worker* employed by the principal if—
 - (a) the engagement of the individual by the principal is arranged by an educational institution where the individual is enrolled; and

- (b) the engagement is part of a work experience program (however described) run by the educational institution.

Example of work experience program

work placement program

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

- (4) In subsection (3):

educational institution means—

- (a) a school, college or other educational institution established or maintained on behalf of the Territory; or
- (b) a school registered, or provisionally registered, under the *Education Act 1937*, part 3 (Registered schools); or
- (c) an educational institution established under a Territory law or a law of the Commonwealth or a State.

15 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 11 (Regular contractors and casuals); or

- (b) the outworker is taken to be a worker employed by the principal under section 12 (Labour hire arrangements).

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.

16 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, snagging, 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.

17 Religious workers (ACT WCA s 6A)

- (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*.

U 17A Volunteers

U 18 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 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*.

U 19 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*.

Chapter 4 Entitlement to compensation

Part 4.1 Important concepts

20 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 Australian Statistician.

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* is 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.

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.

21 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.

22 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.

23 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.

24 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.

25 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.

26 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.

27 Compensation for death or incapacity through disease

- (1) If—
 - (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 substantial contributing factor to the contraction of the disease or the aggravation, acceleration or recurrence 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 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 beginning of the incapacity or the date when the medical treatment was first obtained, whichever is the earlier, shall be deemed to be the date of the injury.
- (3) If a liability of an employer in relation to a disease of a worker arises under this section, any other employer who, before 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 the contribution that is, in default of agreement, settled by arbitration.
- (4) An employer shall not be liable under subsection (2) or (3) in relation to 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 relation to a worker's disease shall, if so required, give the employer who is liable to pay compensation to the claimant with the information about the names and addresses of the worker's other employers that the claimant possesses.

28 Employment-related diseases

Without limiting by implication the operation of section 27, if—

- (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.

29 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 substantial 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 substantial 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 substantially contributed to by a disease if, apart from 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 substantially contributed to by a disease if, apart from the disease—
- (a) the incapacity or disfigurement would not have occurred; or
 - (b) the incapacity would have begun, 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 does not limit the operation of section 27.

Part 4.2 Compensation for personal injury

U 30 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;
 - (e) any other condition prescribed by the regulations for this section.
- (4) Further, this section is subject to the following provisions:
 - (a) section 33 (Compensation limited to Territory workers);
 - (b) section 34 (Injury outside Australia);
 - (c) part 4.8 (Exceptions to entitlements to compensation);
 - (d) in relation to the entitlement to weekly compensation—

- (i) section 37 (What if the worker is dead?);
- (ii) section 113 (Compliance by workers).

31 Amounts of compensation under Act cumulative (ACT WCA s 7 (5))

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.

32 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.

U 33 Compensation limited to Territory workers

- (1) An employer is liable to pay compensation only in relation to a worker of the Territory.

- (2) For this Act, a worker is a worker of whichever Territory or State is—
- (a) the Territory or State where 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 where 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 where the worker was hired for or otherwise taken into that employment.
- (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.
- (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 relation to the injury under the enacted law of a place outside Australia.

34 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.

35 When is a worker taken to be totally incapacitated?

- (1) In 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.

36 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 30 (General entitlements to 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—
- (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) In 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.

U **Part 4.2A** **Employment connection with ACT
or State**

Part 4.3 Weekly compensation

37 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.

38 When do weekly compensation payments begin?

If the worker is or may be 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 or may be entitled to weekly compensation from the date of the injury.

39 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 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.

40 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.

41 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.
- (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.

42 Stopping of payments for partial incapacity

A worker stops being entitled to payments under section 40 (Partially incapacitated workers up to 26 weeks after incapacity

date) or section 41 (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 39 (Totally incapacitated workers), 40 or 41, whichever is earliest;
- (d) when the worker dies.

43 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 39 (Totally incapacitated workers), section 40 (Partially incapacitated workers up to 26 weeks after incapacity date) or section 41 (Partially incapacitated workers after 26 weeks after incapacity date) but the payment of the compensation has been stopped under section 83 (No compensation while imprisoned) or section 113 (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 39, 40 and 41.

44 Living outside Australia (ACT WCA sch 1 cl 14)

- (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.

45 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 44 (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.

46 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.

Examples of benefits not affected

- 1 accrual of long service leave
- 2 accrual of annual leave

47 No assignment etc of weekly compensation (ACT WCA sch 4, cl 13)

Weekly compensation (including compensation payable under section 45 (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

48 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).

49 Meaning of *single loss amount*

In this part:

single loss amount means \$100 000 cpi indexed.

50 Meaning of *maximum loss amount*

In this part:

maximum loss amount means \$150 000 cpi indexed.

51 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.

53 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 injury is not entitled to receive as compensation under this part more than the maximum loss amount for the losses.

54 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.

55 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.

56 Compensation for only arm, leg, hand or foot

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

57 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%.

58 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.

59 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 51 (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.

- (3) The amount of compensation payable for a particular case must, unless decided by agreement, be worked out by conciliation or arbitration under this Act.

60 Special provisions for HIV/AIDS (NSW WCA s 67A)

- (1) Compensation is not payable under section 51 (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 59 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.

61 Deduction for previous injury or pre-existing condition (NSW WC s 68A (1), (2), (6), (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 63 must be used to work out how much (if any) of a worker's hearing loss is caused by age.

62 Further loss and deductible proportions
(NSW WC s 68A (3), (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.

63 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.

64 No compensation for less than 6% hearing loss
(NSW WCA s 69A (1), (3), (4), (5), (6))

- (1) A worker is not entitled to compensation under section 51 (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 51 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.

65 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 64.
- (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.

66 Employer's responsibility to pay for hearing loss tests (NSW WCA s 69B)

- (1) If an employer would, apart from section 64 (No compensation for less than 6% hearing loss), be liable to pay compensation under section 51 (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.
- (4) In this section:

total hearing loss means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

67 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, from a doctor, that complies with the requirements for medical assessments prescribed under the regulations and 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.

68 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

69 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 64 (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 83); or
 - (iii) weekly compensation has been suspended under section 113 (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).

70 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) For 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 74 (Transport costs other than private car) or section 75 (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 76 (Costs of accommodation and meals).

71 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.

72 Second assessments (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 assessed by a doctor, or other person, chosen by the employer.

**73 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.

**74 Transport costs other than private car
(ACT WC Regs reg 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 transport means a public bus or taxi within the meaning of the *Road Transport (Public Passenger Services) Act 2001*.

75 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.

76 Costs of accommodation and meals (ACT WC Regs reg 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).

- (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.

- (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

77 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) Act 1999* (Cwlth), section 3 (definitions) in relation to the child must be disregarded.
- (4) To remove any doubt, the payment under subsection (2) (a) need not be divided equally between the dependants, but may be divided between them as the Magistrates Court considers appropriate.
- (5) Compensation under subsection (2) (b) is payable only while the person receiving it is a child.
- (6) If the worker did not have dependants, the personal representative of the worker is entitled to a maximum of \$4 000 cpi indexed for the funeral expenses of the worker.

78 Payment into court of lump sum death benefits
(ACT WCA sch 1 cl 6)

- (1) A payment mentioned in section 77 (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

79 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 51 (Compensation for permanent injuries generally) for a loss or under section 137 (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.
- (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 manifestly 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.

80 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.

81 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

82 **When is compensation under Act generally not payable?** (ACT WCA s 7 (3), (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.

83 **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.

84 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.

Chapter 5 Injury management process

Part 5.1 Object and definitions for chapter 5

85 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.

86 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 93 (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 102 (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.

87 **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

88 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.

89 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 91 to comply with the obligations imposed on the employer under the injury management program
- under s 93 (2) to give notice of injury to the insurer
- under s 100 to take part and cooperate in establishing a personal injury plan for a worker, and to comply with the plan
- under s 105 and s 106 to provide suitable work for an injured worker
- under s 109 to establish a return-to-work program.

- (3) Subsection (2) does not apply to a self-insurer.

U 90 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.

U 91 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.

U 92 Register of injuries (NSW WIMWCA s 63)

- (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

93 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 92).

- (2) The employer must give the insurer notice of the injury (an *injury notice*) under section 94 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.

94 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.

95 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 93 (2) (Early notification of workplace injury).
- (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 must not be indemnified by the insurer for a payment mentioned in subsection (2).

U 96 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

97 **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.

98 **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.

99 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.

U 100 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.
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.

101 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 113).

- (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.

102 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.

103 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

104 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.

U 105 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, 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.

U 106 **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.

107 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 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.

108 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.

U 109 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 110; 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.

110 Return-to-work guidelines

- (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

111 Obligation of Minister

The Minister must monitor compliance by insurers with the requirements of this chapter.

112 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.

113 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
 - (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.

U 114 Unreasonableness in stopping payment

- (1) This section applies if an insurer gives the worker and Minister notice under section 113 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 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.

115 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 insurer or employer 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).

Chapter 6 Claims

Part 6.1 Making claims

116 Making claim for compensation
(NSW WIMWCA s 65 (1), (2), (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.
- (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.

117 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.

U 118 Medical certificates and claims for compensation
(NSW WIMWCA s 65 (3), (4), (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 comply with the requirements for medical

assessments prescribed under the regulations and include a statement of the doctor's assessment of—

- (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.

119 No compliant certificate with claim

- (1) This section applies if a claim is deficient because section 118 (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 118 (2)) as soon as possible (but in any case within 72 hours) after receiving the claim, the claim is not considered to have been made until section 118 (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 118 (2)) within 72 hours after receiving the claim, the claim is taken to comply with section 118 (2).
- (4) Subsection (2) does not apply if the insurer (or self-insurer) waives the requirement for the claim to comply with section 118 (2).

U 120 Time for taking proceedings generally
(ACT WCA s 25 (1), (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 1 An injured worker may give notice of an injury by making an entry in a register of injuries (see s 92).

Note 2 Section 124 (No notice or defective or inaccurate notice) contains an exception to this section.

U 120A Proceedings on late claims

121 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.
- (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.

122 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.

123 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.
- (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.

124 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.

125 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.

U 126 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.

U 126A Lump sum claims—notice by insurers about double compensation etc

Part 6.2 Time for accepting or rejecting claims

127 Meaning of *insurer* and *given* to insurer for pt 6.2

(1) In this part:

insurer, in relation to a claim against an employer, means—

- (a) the approved insurer with whom the employer has or had a compulsory insurance policy that applies to the claim; or
- (b) if the employer was a self-insurer when the injury happened—the employer; or
- (c) if, when the injury happened, the employer was not a self-insurer and the employer has or had no compulsory insurance policy that applies to the claim—the nominal insurer.

(2) 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.

128 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.

129 Rejecting claims generally

- (1) An insurer rejects a claim for compensation under this Act by written notice given to the worker and, unless the insurer is a self-insurer, the employer.
- (2) The claim is taken to be rejected when the notice is received by the worker and, unless the insurer is a self-insurer, the 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 a statutory declaration explaining why the insurer is rejecting the claim.

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

- (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.

130 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 129.

- (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.

131 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 129.

132 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
 - (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

133 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.

134 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 95 (What if employer does not give notice of injury within time?).
- (4) Subsection (3) does not affect a self-insurer's liability in relation to the claim.

135 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 against section 213 (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

136 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.

137 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.

138 **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.

Chapter 7 Vocational rehabilitation

U 139 **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, including—

- (a) the criteria for approving rehabilitation providers; and
- (b) the conditions that may be imposed on the approval of rehabilitation providers; and
- (c) how and why the approval of an approved rehabilitation provider may be revoked or suspended.

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

140 **Meaning of *vocational rehabilitation*** (ACT WCA s 15A, 15B)

(1) In this chapter:

vocational rehabilitation, for the 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 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.

141 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.

U 142 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.

143 False representation of approval

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

Maximum penalty: 30 penalty units.

Chapter 8 Insurance

U 144 Meaning of *compulsory insurance policy*

- (1) In 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 222 (Approved forms) for a compulsory insurance policy, the form must be used.

- (2) Subject to section 147 (2) (Compulsory insurance—employers) and section 155 (Cover notes), a cover note may be a compulsory insurance policy.

145 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;

- (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.

146 Effect of revocation or suspension of approval

- (1) If the approval of the insurer for this Act is revoked or suspended, section 147 (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 173 (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.

U 147 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.

U 148 Liability of executive officers (ACT WCA s 17B (2A), (2B))

- (1) If a corporation commits an offence against section 147, 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 147.

149 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 173 (Funds for payment by nominal insurer).

U 150 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.

151 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.

152 Self-insurers (ACT WCA s 17C (1))

- (1) The Minister may, by written notice given to an employer, exempt the employer from complying with section 147 (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.

U 153 Compulsory insurance—insurers

- (1) An approved insurer must not refuse to issue a compulsory insurance policy required by an employer for section 147 (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 147 (1) that is not a compulsory insurance policy.

Maximum penalty: 100 penalty units.

- (3) It is not an offence against 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.

U 154 Cancellation

An approved insurer may cancel a compulsory insurance policy only in accordance with a protocol about cancellation.

Maximum penalty: 50 penalty units.

U 155 Cover notes

- (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.

- (2) 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 end of the cover note, the employer does not obtain a policy of insurance from the insurer.

U 156 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 recognised 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; 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.

Note A person who knowingly provides a statutory declaration that contains false information commits an offence against this Act (see s 161).

U 157 **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 recognised 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 commits an offence against this Act (see s 161).

U 158 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 commits an offence against this Act (see s 161).

- (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.

U 159 Information for insurers after cancellation

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 recognised 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.

U 160 Offence by registered auditor

A recognised auditor must not knowingly supply false, misleading or incomplete information in a certificate provided for section 157 (Information for insurers after end of policy), section 158 (Information for insurers about reporting period) or section 159 (Information for insurers after cancellation).

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

U 161 Offence in relation to statutory declaration

- (1) This section applies to a person who provides a statutory declaration under section 156 (Information for insurers before renewal), section 157 (Information for insurers after end of policy) or section 158 (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—
 - (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 Criminal Code, pt 2.4, it is an offence to attempt to commit an offence, to aid, abet or incite a person to commit an offence or to conspire with a person to commit an offence. Also, under the *Crimes Act 1900*, s 181 it is an offence to receive or assist a person knowing they have committed an offence. Those provisions apply to an offence against this section.

U 162 Offence to employ etc after 2nd offence

- (1) This section applies to a person who has been convicted of a 2nd or subsequent offence against the following sections:
 - section 147 (Compulsory insurance—employers)
 - section 148 (Liability of executive officers)
 - section 156 (Information for insurers before renewal)
 - section 157 (Information for insurers after end of policy)
 - section 158 (Information for insurers about reporting period)
 - section 159 (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.

U 163 Provision of information to Minister

- (1) 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.
- (2) 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.
- (3) A notice under subsection (2) shall set out the requirements of subsection (6) in relation to the notice, and the penalty for contravention of subsection (6).
- (4) A person is not excused from giving particulars in accordance with a requirement under subsection (2) on the ground that giving those particulars would incriminate, or would tend to incriminate, the person or would tend to expose that person to proceedings for an offence against a law in force in Australia or elsewhere.
- (5) If a person is required to give details under subsection (2), the details given, or any information, document or thing obtained as a direct or indirect consequence of giving those details, 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 (6).
- (6) A person must not—
- (a) fail to comply with a notice given to the person under subsection (2); or

- (b) give details in response to a notice given to the person under subsection (2) that are false or misleading in a material particular.

Maximum penalty (subsection (6)): 50 penalty units.

164 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*.

165 Claims for payment by nominal insurer

- (1) If—
 - (a) a claim has been made against an employer that the employer is liable to pay compensation in relation to 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) If—
- (a) a final judgment has been obtained against an employer in relation to the employer's liability independently of this Act for an injury to, or the death of, a Territory worker 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 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) If—
- (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 relation to an injury to, or the death of, a Territory worker 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 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 1 month after the right to make the claim arose or within any further time that the Minister, on an application made before or after the end of that period of 1 month, allows.
- (5) In subsection (1):

compensation includes—

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

166 Payments by nominal insurer

Subject to this Act, if a person makes a claim against the nominal insurer in accordance with section 165, the nominal insurer shall pay to that person—

- (a) if the claim is made under section 165 (1)—the compensation payable at the date of the claim or becoming payable afterwards; or
- (b) if the claim is made under section 165 (2)—the amount payable for damages and costs under the judgment to which the claim relates; or
- (c) if the claim is made under section 165 (3)—the amount payable by the employer under the agreement.

167 Reopening of agreements and awards

- (1) This section applies if a claim is made against the nominal insurer under section 165 (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.

168 Deciding or redeciding claim

- (1) If the Magistrates Court makes an order under section 167, 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 169 Power of Supreme Court to set aside certain agreements

- (1) If a claim is made against the nominal insurer under section 165 (3), the nominal insurer may apply to the Supreme Court for an order setting aside the agreement to which the claim relates.
- (2) If, 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 court may, by order, set aside the agreement.
- (3) If an agreement is set aside under this section—
 - (a) the agreement shall, for any proceeding 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 any proceedings in a court.
- (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 proceeding.
- (5) If 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) If—

- (a) an agreement is set aside under subsection (2); and
- (b) apart from this subsection, an action by a party to the agreement to recover damages in relation to a liability to which the agreement related would, at the time the agreement is set aside, be barred or would, within 3 months after the agreement is set aside, become barred, by a law in force in the ACT relating to the limitation of the time within which proceedings in a court may be begun;

the action may, notwithstanding any such law, be begun at any time within 3 months after the date 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) If 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 the way the nominal insurer considers appropriate; 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 170 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.

171 Nominal insurer may act

- The nominal insurer may treat a claim for compensation as having been made against the nominal insurer under section 165 (Claims for payment by nominal insurer) if the nominal insurer—
- (a) receives a copy of the claim under section 170; or
 - (b) is otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the claim.

172 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
 - (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.

173 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 money referred to in subsection (2).
- (2) The nominal insurer shall pay amounts payable under this Act out of money provided in accordance with this section by approved insurers and self-insurers and any other money received under this Act.
- (3) 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.

- (4) Liability to provide an amount referred to in subsection (2) shall be apportioned by the nominal insurer among those who were approved insurers or self-insurers at the time of the occurrence that gave rise to the right to compensation in relation to which the amount is payable.
- (5) In making an apportionment under subsection (4), the nominal insurer must have regard as far as practicable to—
 - (a) the premium income 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).
- (6) When the nominal insurer makes an apportionment under this section, the nominal insurer shall notify, in writing, each approved insurer and self-insurer concerned of particulars of the apportionment and require the insurer or self-insurer to pay to the nominal insurer the apportioned amount, within the time specified in the notice.
- (7) An amount specified in a notice to a person under subsection (6) and unpaid at the end of the time specified in the notice is a debt due and owing to the nominal insurer by the approved insurer or self-insurer and may be sued for and recovered by the nominal insurer in a court of competent jurisdiction.
- (8) If an amount has been provided by approved insurers and self-insurers 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 self-insurers.

U 174 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 written notice, require an employer—
 - (a) to give the information and assistance that the nominal insurer considers necessary; and
 - (b) to give the documents in the employer's possession that the nominal insurer considers necessary; and
 - (c) to execute the documents that are necessary for the employer to execute to enable the nominal insurer to exercise the nominal insurer'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.

175 Proceedings to be in the name of 'The Nominal Insurer'

For this Act—

- (a) any proceeding 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 proceeding were begun 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.

U 176 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.

177 Premiums—remuneration for professional sporting activity

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

U 178 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 222 (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.
- (4) An employer must ensure that claim forms approved by the Minister under section 222 (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.

179 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.

U Chapter 9 Compensation and common law remedies

U Part 9.1 Interpretation and application

180 Definitions for ch 9

In this chapter:

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.

181 References to person who recovers damage etc

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

182 Payments by nominal insurer

- (1) If the nominal insurer pays compensation in relation to an injury to a worker, this chapter applies as if a reference to the worker's employer were a reference to the nominal insurer.
- (2) If the nominal insurer and an employer both pay compensation in relation to an injury suffered by a worker, the rights of the nominal

insurer under this chapter in relation to that payment have priority over the rights of the employer.

U **Part 9.2** **Choice of law**

U **182F** **Lump sum claims—notice by lawyers to clients about repayment requirements**

U Part 9.3 Compensation and common law damages

U 183 Remedies both against the employer and a stranger

If an injury in relation to which compensation is payable under this Act is caused under circumstances that appear to create a legal liability in some person other than the employer to pay damages in relation to 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) if 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) on notice to that person, the employer shall have a first charge on money payable by that person to the worker to the extent of any amounts that the employer has paid to the worker under this Act; and
- (d) if 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 184 Liability arising independently of Act

- (1) Compensation is not payable under this Act in relation to 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 ACT; or
 - (b) a judgment or agreement for damages has been obtained in relation to 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 relation to an injury to the worker, and, subsequently in relation to the injury, the person to whom that compensation was paid obtains workers compensation under a law of a place outside the ACT, 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 ACT in relation to 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 relation to 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 ACT, and a judgment or agreement for damages independently of this Act, in relation to the injury—the net amount to which the person is entitled under that law in relation to the compensation and the damages.

U 185 **Dependants recovering damages and not claiming compensation**

- (1) This section applies if—
 - (a) an employer pays compensation to a dependant of a deceased worker in relation to an injury that resulted in the death of a worker; and
 - (b) damages in relation to 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 relation to the injury has been made by or on behalf of the non-claiming dependant.
- (2) If 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 relation to the worker's injury—the amount of the damages; or
 - (b) in any other case—the amount of the compensation.
- (3) If there is more than 1 non-claiming dependant, each non-claiming 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 relation to the worker's injury to dependants of the worker.

D means the amount of damages recovered by the non-claiming dependant in relation to 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 relation to 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 relation to the worker's injury; or
 - (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.

186 Discharge of liability out of payments into court

- (1) If a worker or a dependant of a deceased worker is liable under section 183 (Remedies both against the employer and a stranger) or section 185 (Dependants recovering damages and not claiming compensation) 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.

Chapter 10 Inspection

187 Definitions for ch 10

In this chapter:

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)).

188 Inspectors

- (1) The chief executive may appoint, in writing, 1 or more inspectors for this Act or a provision of this Act.

Note 1 **Chief executive** means the chief executive of the administrative unit responsible for this section (see *Legislation Act 2001*, s 163 (2) (a)).

Note 2 For the making of appointments (including acting appointments), see *Legislation Act 2001*, div 19.3.

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

- (2) A person must not be appointed 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 appointed, 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.

U 189 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.

U 190 Provision of information to inspectors

- (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 recognised 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 recognised 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.

U 191 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) under a warrant issued under section 193;
 - (b) with the consent of the occupier of the land or premises; or
 - (c) under 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 189.
- (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 where a business, trade, profession or calling is carried on, excluding any part of the premises that is used for residential purposes.

192 Consent to entry and inspection

- (1) Before seeking the consent of the occupier of premises or a place for section 191 (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 section 191 (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 191 (3); and
 - (b) that the occupier has been informed that he or she may refuse to give that consent; and
 - (c) of the day and time when the consent was given.
- (3) If it is material, in any proceedings, for a court to be satisfied that an occupier has consented for section 191 (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.

193 Search warrants

- (1) If 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 offence against this Act, and the information sets out those grounds, the magistrate may issue a search warrant authorising an inspector named in the warrant, with the assistance and by the force that 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 191 (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 about 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 when 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 191 (3) may be exercised; and
 - (e) specify the date, not later than 1 month after the date of issue of the warrant, when the warrant ceases to have effect.

U 194 Obstruction etc of inspector

A person must not, without reasonable excuse, obstruct or hinder an inspector in the exercise of the inspector's functions under this Act.

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

Chapter 11 Procedure for payment of compensation

195 Conciliation and arbitration

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

196 Admissibility of statements by injured workers

- (1) A written statement in relation to a worker's injury that 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 the 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.

197 Appeals

- (1) If a committee or the Magistrates Court gives a decision or makes an order or award in relation to any matter that may be or is required to be settled by arbitration under this Act, any party to the arbitration may appeal from the decision, order or award to the Supreme Court.

- (2) The *Magistrates Court (Civil Jurisdiction) Act 1982*, part 21 applies in relation to an appeal under subsection (1)—
- (a) as if it were an appeal from a judgment or order of a kind specified in that Act, section 387 (2); and
 - (b) for an appeal from a decision, order or award by a committee—as if the decision, order or award were a decision, order or award of the Magistrates Court.

Chapter 12 On-the-spot fines

198 Definitions for ch 12

In this chapter:

commissioner means the Occupational Health and Safety Commissioner.

determined fee means the fee determined under section 221 (Determination of fees) for this chapter.

final infringement notice means a notice under section 200.

infringement notice means a notice under section 199.

on-the-spot fine, in relation to a prescribed offence, means the fine prescribed under the regulations for the offence.

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) any extended period the commissioner allows under section 203 (4) (b).

199 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) any extended period allowed under this chapter; and
 - (f) specify the place where, and how, 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 chapter; and

- (i) include a statement about the procedures for the withdrawal of the notice under this chapter; and
- (j) be dated and signed by the inspector who serves the notice.

Note If a form is approved under s 222 (Approved forms) for an infringement notice, the form must be used.

200 Final infringement notices

- (1) An inspector may serve a final infringement notice on a person if, 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 202; or
 - (b) if the person applies for the withdrawal of the infringement notice under section 202—
 - (i) the application is rejected; and
 - (ii) the person fails to pay the on-the-spot fine within the extended period allowed under section 203 (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) any extended period allowed under this chapter; and
- (g) specify the place where, and how, 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 chapter; and
- (k) include a statement about the procedures for the withdrawal of the notice under this chapter; and
- (m) be dated and signed by the inspector who serves the notice.

201 Discharge of liability for prescribed offences

- (1) This section applies if an infringement notice or a final infringement notice has been served on a person in relation to a prescribed offence and, before the end 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) If this section applies—

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

202 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 written notice 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.

203 Withdrawal of infringement notices

- (1) On receipt of an application under section 202, 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 201 (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) for a decision not to withdraw an infringement notice—28 days beginning on the date of the notice under paragraph (a); or
 - (ii) for a decision not to withdraw a final infringement notice—14 days beginning 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 202, the notice is to be taken to have been withdrawn.
- (6) If 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 199 or 200 in payment of the relevant on-the-spot fine.

204 Prosecution of prescribed offences

- (1) The commissioner shall not institute a prosecution for an offence in relation to which an infringement notice has been served on a person—
 - (a) until the end 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 202—unless and until the application is rejected and the extended period granted under section 203 (4) (b) has ended.
- (2) Nothing in section 199 or 200 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 relation to a prescribed offence.
- (3) If a prosecution is instituted for an offence in relation to which an infringement notice has been served, the commissioner shall refund any amount paid under section 199 or 200 in payment of the on-the-spot fine.

205 Non-antecedent value of infringement notice offences

- (1) For the *Crimes Act 1900*, section 342, 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 chapter.

(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) that has not been found proved by a court.

206 Service of notices under ch 12

- (1) For this chapter, 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 16 years old; 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 relation to the same alleged offence, but it is sufficient for the application of section 201 to the person for the person to pay the relevant amount in accordance with any of the notices so served.

- (3) If 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.

207 Evidence for ch 12

- (1) For this chapter, 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 chapter on a specified person on a specified date;
 - (b) if an infringement notice or a final infringement notice has been served on a person under this chapter, that—
 - (i) further time for payment was, or was not, allowed under section 203 (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.

Chapter 13 Review of decisions by administrative appeals tribunal

208 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).

209 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.

Chapter 14 Miscellaneous

U 210 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.

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

211 Medical referees (ACT WCA s 15)

- (1) The Minister may appoint, in writing, 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.
- (5) An appointment under subsection (1) is a notifiable instrument.

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

U 212 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 147 (Compulsory insurance—employers)
 - section 156 (Information for insurers before renewal)
 - section 157 (Information for insurers after end of policy)
 - section 158 (Information for insurers about reporting period)
 - section 159 (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.

U 213 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).

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.

U 214 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 an offence against this Act.
 - Note* A reference to an offence against a Territory law includes a reference to a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).
- (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).

U 215 Criminal liability of officers of corporation

- (1) If a corporation commits an offence against this Act (other than against section 147 (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 148 deals with the liability of executive officers if a corporation commits an offence against s 147.

- (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

(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.

216 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 remove any 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**.

217 Rules of court

The Executive may make rules in relation to procedure for this Act.

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

218 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.

219 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.

220 Funds for administration of Act

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

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

(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 income 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).

- (4) If the Minister makes an apportionment under this section, the Minister shall notify, in writing, each approved insurer and self-insurer concerned of particulars of the apportionment and require the insurer or self-insurer to pay to the Territory the apportioned amount, within the time specified in the notice.
- (5) An amount specified in a notice to a person under subsection (4) and unpaid at the end of the time specified in the notice is a debt due and owing to the Territory by the approved insurer or self-insurer 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).

221 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*.

222 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.

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

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

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

223 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 the following:
- (a) medical assessments of injured workers;
 - (b) the use of medical specialists in relation to compensable injuries;
 - (c) the functions of medical referees appointed under this Act;
 - (d) what compulsory insurance policies must, and must not, include;
 - (e) how the performance of brokers and agents in relation to workers compensation in the ACT may be monitored;
 - (f) 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;
 - (iv) investigative services;
 - (g) 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;
 - (h) the action that may be taken in relation to an approved insurer, self-insurer or approved rehabilitation provider in

- circumstances prescribed under the regulations, including an order that an insurer or provider pay to the Territory an amount of not more than \$1 000;
- (i) the accreditation of people to act as injury managers;
 - (j) 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;
 - (k) protocols that may be approved by the Minister for this Act and how they may be approved;
 - (l) 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.

Chapter 15 Temporary provisions for acts of terrorism

224 Application of ch 15 to insurers

- (1) This chapter applies to an insurer if—
 - (a) the insurer has acted honestly and taken all proper and business-like steps to obtain reinsurance for the insurer's liability to pay compensation for injuries or deaths (or both) caused by acts of terrorism; and
 - (b) an act of terrorism happens before 1 April 2006; and
 - (c) the insurer accepts liability for claims for compensation for injuries or deaths (or both) caused by the act of terrorism; and
 - (d) the insurer has acted honestly and taken all proper and business-like steps to demand the maximum amounts the insurer may demand under the reinsurance contracts held by the insurer that apply in relation to the claims; and
 - (e) the total amount paid by the insurer for the claims, after the deduction of the maximum amounts the insurer may receive under the reinsurance contracts, is more than the temporary fund threshold amount that applies to the insurer.
- (2) For this chapter, the *temporary fund threshold amount* that applies to an insurer is the amount worked out using the following formula:
$$\text{insurer's market share} \times \text{relevant premium pool amount.}$$
- (3) In this section:
insurer's market share means the proportion (expressed as a percentage) of the administrative costs of the Act apportioned by the Minister to the insurer under section 220 (2) (Funds for

administration of Act) in relation to the financial year before the act of terror happens.

premium pool means the total amount of—

- (a) the premium income received by each approved insurer in relation to compulsory insurance policies in the financial year before the act of terror happens; 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).

relevant premium pool amount means 5% of the premium pool.

225 Definitions for ch 15

In this chapter:

act of terrorism—see section 226.

insurer means an approved insurer or a self-insurer.

temporary fund—see section 227 (1).

temporary fund threshold amount—see section 224 (2).

226 Meaning of act of terrorism for ch 15

- (1) In this chapter:

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

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

- (2) Action falls within this subsection if it—
- (a) involves serious violence against a person; or
 - (b) involves serious damage to property; or
 - (c) endangers a person's life, other than that of the person committing the action; or
 - (d) creates a serious risk to the health or safety of the public or a section of the public; or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

- (3) The use or threat of action falling within subsection (2) that involves the use of firearms or explosives is terrorism whether or not subsection (1) (b) is satisfied.

- (4) In this section:

action includes action outside the ACT or Australia.

government includes the government of another Australian jurisdiction or a foreign country.

person means a person anywhere, whether in or outside the ACT or Australia.

property means property located anywhere, whether in or outside the ACT or Australia.

public includes the public of a place outside the ACT or Australia.

227 Terrorism cover temporary reinsurance fund

- (1) If this chapter applies to an insurer, the terrorism cover temporary reinsurance fund (the *temporary fund*) is established.
- (2) The temporary fund consists of—
- (a) the amounts of levies paid by insurers under this chapter; and

- (b) amounts borrowed by the Territory for the fund; and
 - (c) any contributions made by the Territory to the fund; and
 - (d) any amounts paid to the fund under the *Workers Compensation Supplementation Fund Act 1980*; and
 - (e) income from the investment of amounts in the fund; and
 - (f) any other amounts that may lawfully be paid into the fund.
- (3) The temporary fund is to be managed by the Territory and money paid into it is taken to be trust money under the *Financial Management Act 1996*.

228 Entitlement of insurers to reimbursement from temporary fund

- (1) If this chapter applies to an insurer because of an act of terrorism, the insurer is entitled to be reimbursed from the temporary fund the insurer's uninsured liability for the act of terrorism less the temporary fund threshold amount that applies to the insurer in relation to the act of terrorism.
- (2) However, the insurer is entitled to be fully reimbursed from the temporary fund the insurer's uninsured liability for another act of terrorism that happens—
- (a) before 1 April 2006; and
 - (b) not later than 1 year after the day the act of terrorism mentioned in subsection (1) happens.
- (3) Subsection (2) applies only if the insurer has acted honestly and taken all proper and business-like steps to—
- (a) obtain reinsurance for the insurer's liability to pay compensation for injuries or deaths (or both) caused by the later act of terrorism; and

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

(4) In this section:

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

229 Payments out of temporary fund

The temporary fund may be used to—

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

230 Regulations about temporary fund

- (1) The regulations may make provision in relation to the temporary fund, including—
 - (a) the imposition of levies on insurers for the fund; and
 - (b) payments from the fund.
- (2) In particular, the regulations may make provision in relation to—
 - (a) levies for the fund, including their rate; and
 - (b) payments to the fund, including contributions by the Territory to the fund; and

- (c) payments from the fund, including the information insurers claiming an entitlement to reimbursement from the fund must give to the fund's manager.
- (3) However, the regulations must not impose a levy for a period that is—
- (a) for an approved insurer—more than 10% of the premiums received by the insurer in relation to compulsory insurance policies issued by the insurer that begin during the period; and
 - (b) for a self-insurer—more than 10% of the estimated premium that would have been payable by the self-insurer for a compulsory insurance policy obtained by the self-insurer that began at the beginning of the period.

231 Exclusion of Corporations legislation

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

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

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

Chapter 15 Temporary provisions for acts of terrorism

Section 232

232 Expiry of ch 15

This chapter expires on 1 October 2006.

U Chapter 16 Transitional

233 Definitions for ch 16

In this chapter:

amendment Act means the *Workers Compensation Amendment Act 2001*.

current Act means the *Workers Compensation Act 1951*, as in force after the commencement of the amendment Act.

previous Act means the *Workers' Compensation Act 1951*, as in force immediately before the commencement of the amendment Act.

234 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.

235 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.

236 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.
- (2) The determination is taken to be a determination under the current Act, section 8 (3) (Who is a *worker*?).

237 Approved insurers

- (1) An 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 insurer stops being an approved insurer 6 months after the commencement of the amendment Act unless the insurer, before the end of the 6 months, is approved under section 145 (Approved insurers) other than because of the operation of this section.

238 Exempt employers

- (1) A person who was an exempt employer under the previous Act immediately before the commencement of the amendment Act is taken to be a self-insurer under the current Act.
- (2) However, the person stops being a self-insurer 6 months after the commencement of the amendment Act unless the person, before the end of the 6 months, is exempted under section 152 (Self-insurers) other than because of the operation of this section.

239 Prescribed insurance policies

- (1) This section applies if, immediately before the commencement of the amendment Act, a prescribed insurance policy under the previous Act was in force.

- (2) The prescribed insurance policy is taken to be a compulsory insurance policy under the current Act.

240 Approved rehabilitation providers

- (1) A person who is an approved program provider under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth) is taken to be an approved rehabilitation provider under the current Act.
- (2) A person who is accredited as a provider of rehabilitation services under the *Workers Compensation (Workplace Injury Management) Regulation 1995* (NSW) is taken to be an approved rehabilitation provider under the current Act.
- (3) However, a person mentioned in subsection (1) or (2) stops being an approved rehabilitation provider 6 months after the commencement of the amendment Act unless the person, before the end of the 6 months, is approved under section 139 (Meaning of *approved rehabilitation provider* etc) other than because of the operation of this section.

M 240A Work experience students

241 Children and Young People Act and compensation

Despite the repeal of the *Children and Young People Act 1999*, section 113 (Compensation), the section, as in force immediately before its repeal, is taken to continue in force as if the previous Act were still in force.

242 Periodic Detention Act and compensation

Despite the repeal of the *Periodic Detention Act 1995*, section 28 (Compensation), the section, as in force immediately before its repeal, is taken to continue in force as if the previous Act were still in force.

243 Remand Centres Act and compensation

Despite the repeal of the *Remand Centres Act 1976*, section 21A (Compensation), the section, as in force immediately before its repeal, is taken to continue in force as if the previous Act were still in force.

244 Supervision of Offenders (Community Service Orders) Act and compensation

Despite the repeal of the *Supervision of Offenders (Community Service Orders) Act 1985*, section 10 (Compensation), the section, as in force immediately before its repeal, is taken to continue in force as if the previous Act were still in force.

245 Modification of ch 16'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.

245A Application of Criminal Code—Workers Compensation Amendment Act 2003

To remove any doubt, the Criminal Code does not apply to offences against this Act only because of the amendments of this Act made by the *Workers Compensation Amendment Act 2003*.

245B Auditors' certificates—Workers Compensation Amendment Act 2003

- (1) This section applies if it commences after 1 July 2003.
- (2) A certificate issued by a recognised auditor on or after 1 July 2003, and before the commencement of this section, is taken to have been a certificate issued by a registered auditor.

Note This section commences on the day after the *Workers Compensation Amendment Act 2003* is notified (see that Act, s 2).

246 Expiry of ch 16

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).

**U Chapter 17 Transitional—Workers
Compensation Amendment Act
2003 (No 2)**

Schedule 1 Compensation for permanent injuries

(see s 48 and s 51)

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

Schedule 1 Compensation for permanent injuries

column 1 item	column 2 nature of injury	column 3 % of single loss amount payable
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
	Leg injuries	
33	loss of either leg at or above knee	75
34	loss of either leg below knee	70
	Foot injuries	
35	loss of a foot	65
36	loss of great toe of either foot	22
37	loss of a joint of great toe of either foot	10
38	loss of any other toe	6
39	loss of any joint of any other toe	2
	Bowel injury	
40	permanent loss of bowel function	65
	Loss of sexual organs etc	
41	loss of sexual organs	47
42	loss of both breasts	47
43	loss of 1 breast	30
44	permanent and total loss of capacity to engage in sexual intercourse	75
	Brain damage	
45	permanent brain damage if not, or not completely an injury otherwise compensable under this schedule	100
	Permanent impairment of back, neck, pelvis	
46	permanent impairment of back	60
47	permanent impairment of neck	40

column 1 item	column 2 nature of injury	column 3 % of single loss amount payable
48	permanent impairment of pelvis	15
	Disfigurement	
49	severe facial disfigurement if not, or not completely, an injury otherwise compensable under this schedule	80
50	severe bodily disfigurement if not, or not completely, an injury otherwise compensable under this schedule	50
	Disease	
51	HIV infection (Human Immunodeficiency Virus infection)	100
52	AIDS (Acquired Immune Deficiency Syndrome)	100

U **Schedule 2 Adjacent areas**

U Dictionary

(see s 2)

approved insurer means an insurer approved by the Minister under section 145 (Approved insurers).

approved rehabilitation provider, for chapter 7 (Vocational rehabilitation)—see section 139 (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 21 (Working out average pre-incapacity weekly earnings for non-contractor); or
- (b) for a worker who is a contractor—section 22 (Working out average pre-incapacity weekly earnings for contractor).

average pre-incapacity weekly hours means hours worked out under—

- (a) for a worker who is not a contractor—section 23 (Working out average pre-incapacity weekly hours for non-contractor); or
- (b) for a worker who is a contractor—section 24 (Working out average pre-incapacity weekly hours for contractor).

AWE means—

- (a) the average weekly earnings, States and Territories, seasonally adjusted for the ACT (all males total earnings) contained in *Average Weekly Earnings, Australia* issued by the Australian Statistician; or
- (b) if the Australian Statistician issues a publication (however described) containing average weekly earnings in substitution for, or instead of, the average weekly earnings mentioned in paragraph (a)—the substituted average weekly earnings.

awe indexed—see section 20.

boilermakers deafness includes deafness of a similar origin.

child, of a worker, means a child of the worker who is—

- (a) not in a domestic partnership; and
- (b) under 16 years old or a full-time student.

Note For the meaning of ***domestic partnership***, see the Legislation Act, s 169.

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.

committee, for a matter arising under the Act between an employer and the employer's workers, means a committee that represents the employer and workers that has the power to decide the matter.

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 144 (Meaning of *compulsory insurance policy*).

cpi indexed—see section 20.

deductible proportion, for part 4.4 (Compensation for permanent injuries)—see section 61 (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 8 (3) (Who is a worker?).

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.

domestic partner, of a worker who has died, means the person who was the worker's domestic partner when the worker died.

Note This definition qualifies the meaning of ***domestic partner*** given by the Legislation Act, s 169.

employer—

- (a) see section 5 (Meaning of *employer*); and
- (b) for chapter 5 (Injury management process)—see section 87 (Meaning of *employer* and *insurer* if more than 1).

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 pt 6.2 (Time for accepting or rejecting claims)—see section 127 (2).

incapacity date, for a worker, means—

- (a) the date of the beginning of the period of the worker's incapacity for work; or
- (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 61 (1) (Deduction for previous injury or pre-existing condition).

injured worker—see section 86 (Definitions for ch 5).

injury—see section 4 (Meaning of *injury*).

injury management, for chapter 5 (Injury management process)—see section 86 (Definitions for ch 5).

injury management program, for chapter 5 (Injury management process)—see section 86 (Definitions for ch 5).

injury notice—

- (a) for chapter 5 (Injury management process)—see section 93 (2) (Early notification of workplace injury); and
- (b) for chapter 6 (Claims)—see section 120 (Time for taking proceedings generally).

inspector means an inspector appointed under section 188 (1).

insurer—

- (a) for chapter 5 (Injury management process), means—
 - (i) an approved insurer or a self-insurer; or
 - (ii) if there is more than 1 employer of the worker—see section 87; and
- (b) for part 6.2 (Time for accepting or rejecting claims)—see section 127 (1).

loss, for chapter 4 (Entitlement to compensation)—see section 48.

maximum loss amount, for part 4.4 (Compensation for permanent injuries)—see section 50.

medical referee means a medical referee appointed under section 211.

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.

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, domestic partner, parent, step-parent, mother-in-law, father-in-law or grandparent of the worker or employer.

Note For the meaning of **domestic partner**, see the Legislation Act, s 169. If a worker has died, the definition of **domestic partner** elsewhere in the dictionary provides that the term refers to the person who was the worker's domestic partner when the worker died.

nominal insurer means the nominal insurer appointed under section 164 (1).

nominated treating doctor, for chapter 5 (Injury management process)—see section 86 (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.

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.

partially incapacitated—see section 7 (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 86 (Definitions for ch 5).

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.

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.

protocol—

- (a) for chapter 7 (Vocational rehabilitation)—see section 141 (Meaning of *protocol* in ch 7 etc); or
- (b) means a protocol, approved in accordance with the regulations, prescribing how certain activities under this Act should be performed.

recognised auditor, in relation to a certificate provided for an employer for this Act, means any of the following who are not the employer or an employee or executive officer of the employer:

- (a) an auditor registered under the Corporations Act;
- (b) a member of the Institute of Chartered Accountants in Australia;
- (c) a member of the Australian Society of Certified Practising Accountants;
- (d) a member of the National Institute of Accountants.

registered agreement means an agreement registered under section 79 (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 109 (Workplace rehabilitation).

reviewable decision, for chapter 13 (Review of decisions by administrative appeals tribunal)—see section 208 (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 152 (Self-insurers).

single loss amount, for part 4.4 (Compensation for permanent injuries)—see section 49.

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.

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 33 (Compensation limited to Territory workers).

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

totally incapacitated—see section 6 (Meaning of *totally incapacitated*).

vocational rehabilitation, for chapter 7 (Vocational rehabilitation)—see section 140 (Meaning of *vocational rehabilitation*).

weekly compensation, for a worker, means compensation to which the worker is entitled under section 39 (Totally incapacitated workers), section 40 (Partially incapacitated workers up to 26 weeks after incapacity date) or section 41 (Partially incapacitated workers after 26 weeks after incapacity date).

worker—see chapter 3 (Meaning of worker).

workplace injury—see section 86 (Definitions for ch 5).

Endnotes

1 About the endnotes

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 and expiries 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 endnote.

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.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Workmen's Compensation Ordinance 1951* No 2 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

The Act was renamed as the *Workers' Compensation Act 1951* by the *Workers' Compensation (Amendment) Act 1991* No 105, and later renamed as the *Workers Compensation Act 1951* under the *Legislation Act 2001* (see also Act 2001 No 81 s 5).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

Legislation before becoming Territory enactment

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

Endnotes

3 Legislation history

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

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

Endnotes

3 Legislation history

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

**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)

Magistrates Court Ordinance 1985 No 67

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

Commercial Arbitration Ordinance 1986 No 84

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

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 sch 1

notified 10 May 1989 (Cwlth Gaz 1989 No S160)
s 1, s 2 commenced 10 May 1989 (s 2 (1))
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

Legislation after becoming Territory enactment**Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 s 7**

notified 20 September 1991 (Gaz 1991 No S95)
s 1, s 2 commenced 20 September 1991 (s 2 (1))
s 7 commenced 25 September 1991 (s 2 (2) and 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 (Gaz 1993 No S26)
commenced 9 March 1993 (s 2)

Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1

notified 11 October 1994 (Gaz 1994 No S197)
s 1, s 2 commenced 11 October 1994 (s 2 (1))
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

Endnotes

3 Legislation history

Workers' Compensation (Amendment) Act 1994 No 68

notified 1 November 1994 (Gaz 1994 No S229)
s 1, s 2 commenced 1 November 1994 (s 2 (1))
s 5 (in pt) 25 November 1994 (s 2 (2) and Gaz 1994 No S286)
remainder commenced 1 January 1995 (s 2 (2) and Gaz 1995 No S286)

Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1

notified 15 December 1994 (Gaz 1994 No S280)
s 1, s 2 commenced 15 December 1994 (s 2 (1))
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

Statute Law Revision Act 1995 No 46 sch

notified 18 December 1995 (Gaz 1995 No S306)
amnds commenced 18 December 1995 (s 2)

Workers' Compensation (Amendment) Act 1995 No 52

notified 20 December 1995 (Gaz 1995 No S313)
commenced 20 December 1995 (s 2)

Workers' Compensation (Amendment) Act 1996 No 13

notified 1 May 1996 (Gaz 1996 No S71)
commenced 1 May 1996 (s 2)

Workers' Compensation (Amendment) Act 1997 No 27

notified 16 July 1997 (Gaz 1997 No S185)
ss 1-3 commenced 16 July 1997 (s 2 (1))
remainder commenced 13 January 1998 (s 2 (2) and Gaz 1998 No S19)

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

notified 9 October 1997 (Gaz 1997 No 300)
ss 1-3 commenced 9 October 1997 (s 2 (1))
remainder commenced 17 December 1997 (s 2 (2) and 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 (Gaz 1998 No S193)
commenced 11 September 1998 (s 2)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3

notified 10 November 1999 (Gaz 1999 No 45)
commenced 10 November 1999 (s 2)

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

notified 23 December 1999 (Gaz 1999 No S65)
ss 1-3 commenced 23 December 1999 (s 2 (1))
remainder commenced 23 June 2000 (s 2 (3))

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 (Gaz 2000 No S69)
commenced 21 December 2000 (s 2)

Statute Law Amendment Act 2000 No 80 sch 3

notified 21 December 2000 (Gaz 2000 No S69)
amnds commenced 21 December 2000 (s 2 (1))

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 see Gaz 2001 No S65)

Endnotes

3 Legislation history

Workers Compensation Amendment Act 2001 No 81

notified LR 28 September 2001

s 1, s 2 commenced 28 September 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))

Legislation Amendment Act 2002 No 11 amdts 2.113-2.115

notified LR 27 May 2002

s 1, s 2 commenced 27 May 2002 (LA s 75)

amdts 2.113-2.115 commenced 1 July 2002 (s 2 (2))

Workers Compensation (Acts of Terrorism) Amendment Act 2002 No 22

notified LR 28 June 2002

s 1, s 2 commenced 28 June 2002 (LA s 75)

remainder commenced 1 July 2002 (s 2)

as modified by

Workers Compensation Regulations 2002 SL2002-20

as amended by

Workers Compensation Amendment Regulations 2002 (No 1) SL2002-29 reg 14, reg 15

notified LR 25 October 2002

reg 1, reg 2 commenced 25 October 2002 (LA s 75 (1))

reg 14, reg 15 commenced 26 October 2002 (reg 2)

as amended by

Statute Law Amendment Act 2002 (No 2) No 49 pt 1.5 and pt 3.30

notified LR 20 December 2002

s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))

pt 1.5 and pt 3.30 commenced 17 January 2003 (s 2 (1))

Criminal Code 2002 No 51 pt 1.29

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

pt 1.29 commenced 1 January 2003 (s 2 (1))

Workers Compensation Amendment Act 2003 A2003-32

notified LR 30 June 2003
 s 1, s 2 commenced 30 June 2003 (LA s 75 (1))
 remainder commenced 1 July 2003 (s 2)

Statute Law Amendment Act 2003 A2003-41 sch 3 pt 3.24

notified LR 11 September 2003
 s 1, s 2 commenced 11 September 2003 (LA s 75 (1))
 sch 3 pt 3.24 commenced 9 October 2003 (s 2 (1))

Workers Compensation Amendment Act 2003 (No 2) A2003-49

notified LR 3 December 2003
 s 1, s 2 commenced 3 December 2003 (LA s 75 (1))
remainder awaiting commencement (s 2)

Note default commencement under LA s 79: 3 June 2004

**Sexuality Discrimination Legislation Amendment Act 2004 A2004-2
sch 1 pt 1.19**

notified LR 18 February 2004
 s 1, s 2 commenced 18 February 2004 (LA s 75 (1))
 sch 1 pt 1.19 commenced 22 March 2004 (s 2 and CN2004-4)

4 Amendment history**Title**

title am 1983 No 69; 1991 No 105 s 4

Preliminary

pt 1 hdg ins 1991 No 105 s 5
 om 2001 No 81 s 4

Entitlement to compensation

pt 2 hdg ins 1991 No 105 s 7
 om 2001 No 81 s 6

Occupational rehabilitation

pt 2A hdg ins 1994 No 68
 om 2001 No 81 s 19

Insurance

pt 3 hdg ins 1991 No 105 s 11
 renum as ch 8 hdg 2001 No 81 amdt 1.17

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

Endnotes

4 Amendment history

Inspection	
pt 5 hdg	ins 1991 No 105 s 18 renum as ch 10 hdg 2001 No 81 amdt 1.38
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
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
Miscellaneous	
pt 7 hdg	renum as ch 14 hdg 2001 No 81 amdt 1.50
Transitional	
pt 8 hdg	ins 2000 No 80 amdt 3.40 om 2001 No 81 s 31
Preliminary	
ch 1 hdg	ins 2001 No 81 s 4
Name of Act	
s 1	sub 1991 No 105 s 5; 2001 No 81 s 5
Interpretation generally	
ch 2 hdg	ins 2001 No 81 s 5
Dictionary	
s 1A	renum as s 2
Dictionary	
s 2	orig s 2 om 2001 No 44 amdt 1.4351 (prev s 1A) ins 2001 No 81 s 5 renum R9 LA (see 2001 No 81 s 34)
Meaning of <i>injury</i>	
s 2A	renum as s 4
Notes	
s 3	orig s 3 om 1978 No 46 (prev s 2) ins 2001 No 81 s 5 renum R9 LA (see 2001 No 81 s 34) <u>s 3 (2), (3) and bracketed section heading notes exp 1 July 2004 (s 3 (3))</u>
<u>Offences against Act—application of Criminal Code etc</u>	
s 3A	orig s 3A renum as s 6 ins A2003-49 amdt 2.1

Meaning of *injury*

s 4 orig s 4 om 1959 No 21
(prev s 2A) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Who is a *worker*?

s 4A renum as s 8

Who is not a *worker*?

s 4B renum as s 9

Casuals not employed for trade or business

s 4C renum as s 10

Regular contractors and casuals

s 4D renum as s 11

Meaning of *employer*

s 5 orig s 5 om 1959 No 21
(prev s 3) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Subcontracting

s 5AA (prev s 14) renum as s 13

Trainees

s 5A renum as s 14

Outworkers

s 5B renum as s 15

Timber contractors

s 5C renum as s 16

Religious workers

s 5D renum as s 17

Commercial voluntary workers

s 5E renum as s 18

Public interest voluntary workers

s 5F renum as s 19

Meaning of *cpi indexed* and *awe indexed*

s 5G renum as s 20

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

s 5H renum as s 21

Working out average pre-incapacity weekly earnings for contractor

s 5I renum as s 22

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

s 5J renum as s 23

Endnotes

4 Amendment history

Working out average pre-incapacity weekly hours for contractor

s 5K renum as s 24

Overtime—hours and wages

s 5L renum as s 25

Gradual onset of incapacity

s 5M renum as s 26

Compensation for death or incapacity through disease

s 5N (prev s 9) renum as s 27

Employment-related diseases

s 5O (prev s 9A) renum as s 28

Compensation for disease

s 5P (prev s 9B) renum as s 29

Meaning of *totally incapacitated*

s 6 orig 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
(prev s 3A) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

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

General entitlement to compensation for personal injury

s 6C renum as s 30

Amounts of compensation under Act cumulative

s 6D renum as s 31

Payments to people with legal disabilities

s 6E renum as s 32

Meaning of *partially incapacitated*

s 7 orig s 7 am 1983 No 69 (as am 1984 No 5); 1991 No 5
om 2001 No 81 s 8
(prev s 4) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Compensation limited to Territory workers

s 7A renum as s 33

Injury outside Australia

s 7B renum as s 34

When is a worker taken to be totally incapacitated?

s 7C renum as s 35

Meaning of worker

ch 3 hdg ins 2001 No 81 s 5

Who is a worker?

s 8 orig s 8 renum as s 36
(prev s 4A) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 s 4

What if the worker is dead?

s 8A renum as s 37

When do weekly compensation payments begin?

s 8B renum as s 38

Totally incapacitated workers

s 8C renum as s 39

Partially incapacitated workers up to 26 weeks after incapacity date

s 8D renum as s 40

Partially incapacitated workers after 26 weeks after incapacity date

s 8E renum as s 41

Stopping of payments for partial incapacity

s 8F renum as s 42

Effect on payment period of loss of entitlement to weekly compensation

s 8G renum as s 43

Living outside Australia

s 8H renum as s 44

Effect of living outside Australia if compensation still payable

s 8I renum as s 45

Effect of payment of weekly compensation on other benefits etc

s 8J renum as s 46

Endnotes

4 Amendment history

No assignment etc of weekly compensation

s 8K renum as s 47

Meaning of *loss*

s 8L renum as s 48

Meaning of *single loss amount*

s 8M renum as s 49

Meaning of *maximum loss amount*

s 8N renum as s 50

Compensation for permanent injuries generally

s 8O renum as s 51

Actuarial review and back, neck and pelvis impairments

s 8OA renum as s 52

Compensation for 2 or more losses

s 8P renum as s 53

Compensation and left-handedness

s 8Q renum as s 54

Compensation for combination of items

s 8R renum as s 55

Compensation for only arm, leg, hand or foot

s 8S renum as s 56

Compensation for loss of sexual organs

s 8T renum as s 57

Loss of bowel function

s 8U renum as s 58

Proportionate loss of use

s 8V renum as s 59

Special provisions for HIV/AIDS

s 8W renum as s 60

Deduction for previous injury or pre-existing condition

s 8X renum as s 61

Further loss and deductible proportions

s 8Y renum as s 62

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s 8Z renum as s 63

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s 9 orig s 9 reloc as s 5N
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(prev s 4B) ins 2001 No 81 s 5
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s 9AA ins 1993 No 19
om 2001 No 81 amdt 1.13

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s 9A orig s 9A reloc as s 5O
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s 9B orig s 9B reloc as s 5P
renum as s 29
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s 9C renum as s 67

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s 9D renum as s 68

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s 9E renum as s 69

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s 9F renum as s 70

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s 9G renum as s 71

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s 9H renum as s 72

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s 9I renum as s 73

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s 9J renum as s 74

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s 9K renum as s 75

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s 9L renum as s 76

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Casuals not employed for trade or business

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
om 2001 No 81 s 15
(prev s 4C) ins 2001 No 81 s 5
am 2002 No 22 amdt 1.8
renum R9 LA (see 2001 No 81 s 34)

Payment into court of lump sum death benefits

s 10A orig s 10A ins 1983 No 69
am 1987 No 10; 1991 No 105
om 2001 No 81 s 15
prev s 10A renum as s 78

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
prev s 10B renum as s 79

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
prev s 10C renum as s 80

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
prev s 10D renum as s 81

When is compensation under Act generally not payable?

s 10E orig s 10E ins 1983 No 69
om 2001 No 81 s 15
prev s 10E renum as s 82

No compensation while imprisoned

s 10F orig s 10F ins 1983 No 69
am 1991 No 105
om 2001 No 81 s 15
prev s 10F renum as s 83

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s 10G renum as s 84

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s 10H renum as s 85

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s 10I renum as s 86

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s 10J renum as s 87

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s 10K renum as s 88

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s 10L renum as s 89

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s 10M renum as s 90

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s 10N renum as s 91

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s 10NA renum as s 92

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s 10O renum as s 93

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s 10P renum as s 94

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s 10Q renum as s 95

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s 10R renum as s 96

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s 10S renum as s 97

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s 10T renum as s 98

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s 10U renum as s 99

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s 10V renum as s 100

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s 10W renum as s 101

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s 10X renum as s 102

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s 10Y renum as s 103

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s 10Z renum as s 104

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s 10ZA renum as s 105

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s 10ZB renum as s 106

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s 10ZC renum as s 107

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s 10ZD renum as s 108

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s 10ZE renum as s 109

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s 10ZF renum as s 110

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s 10ZG renum as s 111

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s 10ZH renum as s 112

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s 10ZI renum as s 113

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S 10ZIA renum as s 114

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s 10ZJ renum as s 115

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s 11 orig s 11 renum as s 116
(prev s 4D) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

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s 11A renum as s 117

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s 11B renum as s 118

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s 11C renum as s 119

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s 11D renum as s 120

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s 11E renum as s 121

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s 11F renum as s 122

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s 11G renum as s 123

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S 11H renum as s 124

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s 11I renum as s 125

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s 11J renum as s 126

Labour hire arrangements

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
(prev s 5) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

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s 12A renum as s 128

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s 12B renum as s 129

Rejecting claim within 28 days

s 12C orig s 12C ins 1975 No 11
om 1991 No 105
prev s 12C renum as s 130

Rejecting claims after 28 days but within 1 year

s 12D renum as s 131

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s 12E renum as s 132

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s 12F renum as s 133

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s 12G renum as s 134

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s 12H renum as s 135

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s 12I renum as s 136

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s 12J renum as s 137

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s 12K renum as s 138

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s 13 orig s 13 am 1968 No 19; 1991 No 105
om 2001 No 81 s 17
(prev s 14) am 1967 No 44; 1991 No 105; 2001 No 81 amdt
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reloc as s 5AA 2001 No 81 amdt 1.15
renum as s 13 R9 LA (see 2001 No 81 s 34)

Trainees

s 14 orig s 14 reloc as s 5AA
renum as s 13
(prev s 5A) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.6; A2003-49 ss 5-7

Outworkers

s 15 orig 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
(prev s 5B) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

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s 15A renum as s 139

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s 15B renum as s 140

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s 15C renum as s 141

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s 15D renum as s 142

False representation of approval

s 15E renum as s 143

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

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

Timber contractors

s 16 (prev s 5C) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Approved insurers

s 16A renum as s 145

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s 16B renum as s 146

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s 16C renum as s 147

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s 16D renum as s 148

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s 17 orig s 17 om 1959 No 12
(prev s 5D) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Volunteers

s 17A orig s 17A renum as s 150
ins A2003-49 s 9

Evidence of maintenance of compulsory insurance policy

s 17B renum as s 151

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s 17C renum as s 152

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s 17D renum as s 153

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s 17DA renum as s 154

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s 17E renum as s 155

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s 18 orig s 18 renum as s 156
(prev s 5E) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 s 10

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s 18AA renum as s 157

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s 18AB renum as s 158

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s 18AC renum as s 159

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s 18AD renum as s 160

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s 18AE renum as s 161

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s 18AF renum as s 162

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s 18A renum as s 163

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s 18B renum as s 164

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s 18C renum as s 165

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s 18D renum as s 166

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s 18E renum as s 167

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s 18EAA renum as s 168

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s 18EA renum as s 169

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s 18F renum as s 170

Nominal insurer may act

s 18FA renum as s 171

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s 18G renum as s 172

Funds for payments by nominal insurer

s 18H renum as s 173

Information and assistance by employer to nominal insurer

s 18J renum as s 174

Proceedings to be in the name of 'The Nominal Insurer'

s 18K renum as s 175

Public interest voluntary workers

s 19 orig s 19 am 1967 No 44; 1969 No 18
om 1991 No 105
(prev s 5F) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 s 11

Entitlement to compensation

ch 4 hdg ins 2001 No 81 s 6

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pt 4.1 hdg ins 2001 No 81 s 7

Meaning of *cpi indexed* and *awe indexed*

s 20 orig s 20 renum as s 176
(prev s 5G) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)
am A2003-41 amdt 3.518, amdt 3.519

Premiums—remuneration for professional sporting activity

s 20AA renum as s 177

Variation of insurance policies

s 20A ins 1991 No 105
om 2001 No 81 amdt 1.29

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

s 21 orig s 21 renum as s 178
(prev s 5H) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

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s 21AA renum as s 179

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s 21A renum as s 180

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s 21AB renum as s 181

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s 21B renum as s 182

Working out average pre-incapacity weekly earnings for contractor

s 22 orig s 22 renum as s 183
(prev s 5I) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

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

s 23 orig s 23 renum as s 184
(prev s 5J) ins 2001 No 81 s 7
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s 23A renum as s 185

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s 23B renum as s 186

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s 23C renum as s 187

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s 23D renum as s 188

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s 23E renum as s 189

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s 23F renum as s 190

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s 23G renum as s 191

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s 23H renum as s 192

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s 23I renum as s 193

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s 23J renum as s 194

Working out average pre-incapacity weekly hours for contractor

s 24
orig s 24 renum as s 195
(prev s 5K) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

Overtime—hours and wages

s 25
orig s 25 am 1983 No 69; 1991 No 105
om 2001 No 81 amdt 1.44
(prev s 5L) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

Admissibility of statements by injured workers

s 25A renum as s 196

Gradual onset of incapacity

s 26
orig s 26 renum as s 197
(prev s 5M) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

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

s 26E 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

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s 26G renum as s 198

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s 26H renum as s 199

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s 26J renum as s 200

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s 26K renum as s 201

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s 26L renum as s 202

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s 26M renum as s 203

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s 26N renum as s 204

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s 26P renum as s 205

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s 26Q renum as s 206

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s 26R renum as s 207

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s 26RA renum as s 208

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s 26RB renum as s 209

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s 26RC renum as s 210

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s 26RD (prev s 15) reloc as s 26RD
renum as s 211

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s 26S renum as s 212

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s 26T renum as s 213

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s 26U renum as s 214

Compensation for death or incapacity through disease

s 27 orig s 27 om 1989 No 38
(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
renum as s 27 R9 LA (see 2001 No 81 s 34)

Minister must take advice

s 27A orig s 27A ins 1991 No 105
om 1998 No 54
prev s 27A renum as s 216

Rules of court

s 27B renum as s 217

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s 27C orig s 27C ins 1991 No 105
om 2001 No 44 amdt 1.4382
prev s 27C renum as s 218

References to Workers' Compensation Act

s 27CA renum as s 219

Funds for administration of Act

s 27D renum as s 220

Employment-related diseases

s 28 (prev s 9A) ins 1983 No 69
am 1991 No 105
reloc as s 5O 2001 No 81 amdt 1.14
renum as s 28 R9 LA (see 2001 No 81 s 34)

Compensation for disease

s 29 orig s 29 renum as s 31
prev s 29 renum as s 222
(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
renum as s 29 R9 LA (see 2001 No 81 s 34)

Compensation for personal injury

pt 4.2 hdg ins 2001 No 81 s 8

General entitlement to compensation for personal injury

s 30 orig s 30 renum as s 223
(prev s 6C) ins 2001 No 81 s 8
am 2002 No 22 amdt 1.9
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 1.1

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s 30A renum as s 224

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s 30B renum as s 225

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s 30C renum as s 226

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s 30D renum as s 227

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s 30E renum as s 228

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s 30F renum as s 229

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s 30G renum as s 230

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s 30H renum as s 231

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s 30I renum as s 232

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Amounts of compensation under Act cumulative

s 31 (prev s 29) ins 2000 No 80 amdt 3.40
renum 2001 No 44 amdt 1.4384
om 2001 No 81 s 31
(prev s 6D) ins 2001 No 81 s 8
renum R9 LA (see 2001 No 81 s 34)

Payments to people with legal disabilities

s 32 orig s 32 renum as s 233
(prev s 6E) ins 2001 No 81 s 8
renum R9 LA (see 2001 No 81 s 34)

Compensation limited to Territory workers

s 33 orig s 33 renum as s 234
(prev s 7A) ins 1997 No 27
am 2001 No 81 s 9, amdts 1.8-1.10, amdt 2.3
renum R9 LA (see 2001 No 81 s 34)
om A2003-49 amdt 1.2

Injury outside Australia

s 34 orig s 34 renum as s 235
(prev s 7B) ins 1997 No 27
sub 2001 No 81 amdt 1.11
renum R9 LA (see 2001 No 81 s 34)

When is a worker taken to be totally incapacitated?

s 35 orig s 35 renum as s 236
(prev s 7C) ins 1997 No 66
sub 2001 No 81 amdt 2.4
renum R9 LA (see 2001 No 81 s 34)

Journey claims

s 36 orig s 36 renum as s 237
(prev s 8) am 1952 No 4; 1968 No 16; 1983 No 69; 1991
No 105
sub 2001 No 81 s 10
renum R9 LA (see 2001 No 81 s 34)

Employment connection with ACT or State

pt 4.2A ins A2003-49 amdt 1.3

Meaning of Territory or State of connection etc

s 36A ins A2003-49 amdt 1.3

Employment connection test

s 36B ins A2003-49 amdt 1.3

Determination of Territory or State of connection in workers compensation proceedings

s 36C ins A2003-49 amdt 1.3

Determination of Territory or State of connection by Magistrates Court

s 36D ins A2003-49 amdt 1.3

Recognition of previous determinations of Territory or State of connection

s 36E ins A2003-49 amdt 1.3

No ACT compensation if external compensation received

s 36F ins A2003-49 amdt 1.3

Weekly compensation

pt 4.3 hdg ins 2001 No 81 s 11

What if the worker is dead?s 37 orig s 37 renum as s 238
(prev s 8A) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)**Prescribed insurance policies**

s 37A renum as s 239

Approved rehabilitation providers

s 37B renum as s 240

Children and Young People Act and compensation

s 37C renum as s 241

Periodic Detention Act and compensation

s 37D renum as s 242

Remand Centres Act and compensation

s 37E renum as s 243

Supervision of Offenders (Community Service Orders) Act and compensation

s 37F renum as s 244

When do weekly compensation payments begin?s 38 orig s 38 renum as s 245
(prev s 8B) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.7**Totally incapacitated workers**s 39 orig s 39 renum as s 246
(prev s 8C) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)**Partially incapacitated workers up to 26 weeks after incapacity date**s 40 (prev s 8D) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

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Partially incapacitated workers after 26 weeks after incapacity date

s 41 (prev s 8E) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Stopping of payments for partial incapacity

s 42 (prev s 8F) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Effect on payment period of loss of entitlement to weekly compensation

s 43 (prev s 8G) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Living outside Australia

s 44 (prev s 8H) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Effect of living outside Australia if compensation still payable

s 45 (prev s 8I) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Effect of payment of weekly compensation on other benefits etc

s 46 (prev s 8J) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

No assignment etc of weekly compensation

s 47 (prev s 8K) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for permanent injuries

pt 4.4 hdg ins 2001 No 81 s 11

Meaning of loss

s 48 (prev s 8L) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Meaning of single loss amount

s 49 (prev s 8M) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Meaning of maximum loss amount

s 50 (prev s 8N) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for permanent injuries generally

s 51 (prev s 8O) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Actuarial review and back, neck and pelvis impairments

s 52 (prev s 8OA) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2002 (s 52 (10))

Compensation for 2 or more losses

s 53 (prev s 8P) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation and left-handedness

s 54 (prev s 8Q) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for combination of items

s 55 (prev s 8R) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for only arm, leg, hand or foot

s 56 (prev s 8S) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for loss of sexual organs

s 57 (prev s 8T) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Loss of bowel function

s 58 (prev s 8U) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Proportionate loss of use

s 59 (prev s 8V) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.8

Special provisions for HIV/AIDS

s 60 (prev s 8W) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Deduction for previous injury or pre-existing condition

s 61 (prev s 8X) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Further loss and deductible proportions

s 62 (prev s 8Y) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Loss of hearing because of age

s 63 (prev s 8Z) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

No compensation for less than 6% hearing loss

s 64 (prev s 9) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Presumption to be drawn from refusal to submit to hearing examination

s 65 (prev s 9A) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

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Employer's responsibility to pay for hearing loss tests

s 66 (prev s 9B) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Reimbursement for costs of medical certificate and examination

s 67 (prev s 9C) ins 2001 No 81 s 11
am 2002 No 22 amdt 1.10
renum R9 LA (see 2001 No 81 s 34)

Limited entitlement if death happens within 3 months

s 68 (prev s 9D) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for medical treatment, damage and other costs

pt 4.5 hdg ins 2001 No 81 s 11

Application of pt 4.5

s 69 (prev s 9E) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Employer liability for medical treatment and damage

s 70 (prev s 9F) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Claim for compensation for pt 4.5

s 71 (prev s 9G) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Second assessments

s 72 hdg (prev s 9H hdg) sub 2002 No 22 amdt 1.11
renum R9 LA (see 2001 No 81 s 34)

s 72 (prev s 9H) ins 2001 No 81 s 11
am 2002 No 22 amdt 1.12
renum R9 LA (see 2001 No 81 s 34)

Payments for treatment received from hospital

s 73 (prev s 9I) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Transport costs other than private car

s 74 (prev s 9J) ins 2001 No 81 s 11
am 2002 No 22 amdt 1.13
renum R9 LA (see 2001 No 81 s 34)

Working out transport costs for private cars

s 75 (prev s 9K) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Costs of accommodation and meals

s 76 (prev s 9L) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for death

pt 4.6 hdg ins 2001 No 81 s 11

Death benefits

s 77 (prev s 10) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.9, amdt 1.10; ss renum R14 LA
(see 2002 No 49 amdt 3.255)

Payment into court of lump sum death benefits

s 78 (prev s 10A) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Registration of agreements for compensation

pt 4.7 hdg ins 2001 No 81 s 11

Registration of agreements for compensation

s 79 (prev s 10B) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.11

Effect of registration of agreements

s 80 (prev s 10C) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Cancellation or amendment of registered agreements

s 81 (prev s 10D) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Exceptions to entitlements to compensation

pt 4.8 hdg ins 2001 No 81 s 11

When is compensation under Act generally not payable?

s 82 (prev s 10E) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

No compensation while imprisoned

s 83 (prev 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
renum R9 LA (see 2001 No 81 s 34)

Compensation for sporting injuries

s 84 (prev s 10G) ins 1995 No 52
renum R9 LA (see 2001 No 81 s 34)

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

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Object of ch 5

s 85 (prev s 10H) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Definitions for ch 5

s 86 (prev s 10I) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

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

s 87 (prev s 10J) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

General obligations

pt 5.2 hdg ins 2001 No 81 s 16

Insurer to establish etc injury management program

s 88 (prev s 10K) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Insurer to give effect to injury management program

s 89 (prev s 10L) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Insurer's obligation of prompt payment

s 90 (prev s 10M) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 2.2

Employer's obligations for injury management programs

s 91 (prev s 10N) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.3, amdt 2.4

Register of injuries

s 92 (prev s 10NA) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.5, amdt 2.6

Obligations on injury

pt 5.3 hdg ins 2001 No 81 s 16

Early notification of workplace injury

s 93 (prev s 10O) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Injury notice

s 94 (prev s 10P) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

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

s 95 (prev s 10Q) ins 2001 No 81 s 16
am 2002 No 22 amdt 1.14
renum R9 LA (see 2001 No 81 s 34)

Obligation of insurer on being notified of injury

s 96 (prev s 10R) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 s 12

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 97 (prev s 10S) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Provision of information about personal injury plan

s 98 (prev s 10T) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Vocational rehabilitation

s 99 (prev s 10U) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Employer's personal injury plan obligations

s 100 (prev s 10V) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.7

Worker's personal injury plan obligations

s 101 (prev s 10W) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Nomination of doctor for personal injury plan

s 102 (prev s 10X) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Subsequent medical certificates under personal injury plan

s 103 (prev s 10Y) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Other obligations

pt 5.5 hdg ins 2001 No 81 s 16

Injured worker's obligation to return to work

s 104 (prev s 10Z) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Endnotes

4 Amendment history

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

s 105 (prev s 10ZA) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.8

Employer must provide suitable work for contract workers

s 106 (prev s 10ZB) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.9, amdt 2.10

Payment of cost of treatment of injured worker

s 107 (prev s 10ZC) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Second injury arrangements

s 108 (prev s 10ZD) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Workplace rehabilitation

s 109 (prev s 10ZE) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 2.11

Return-to-work guidelines

s 110 (prev s 10ZF) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Compliance with chapter 5

pt 5.6 hdg ins 2001 No 81 s 16

Obligation of Minister

s 111 (prev s 10ZG) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Compliance by insurers

s 112 (prev s 10ZH) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Compliance by workers

s 113 (prev s 10ZI) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Unreasonableness in stopping payment

S 114 (prev s 10ZIA) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.12

Liability not affected

s 115 (prev s 10ZJ) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 3.256

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 116 (prev 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
renum R9 LA (see 2001 No 81 s 34)

Claim for property loss or damage

s 117 (prev s 11A) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Medical certificates and claims for compensation

s 118 (prev s 11B) ins 2001 No 81 s 17
am 2002 No 22 amdt 1.15
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 s 13

No compliant certificate with claim

s 119 hdg (prev s 11C hdg) sub 2002 No 22 amdt 1.16
renum R9 LA (see 2001 No 81 s 34)
s 119 (prev s 11C) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Time for taking proceedings generally

s 120 (prev s 11D) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 3.257; A2003-49 ss 14-16

Proceedings on late claims

s 120A ins A2003-49 s 17

Time for making claim under pt 4.4

s 121 (prev s 11E) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

When is a claim made?

s 122 (prev s 11F) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

The notice for an injury

s 123 (prev s 11G) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

No notice or defective or inaccurate notice

s 124 (prev s 11H) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Endnotes

4 Amendment history

Admissibility of statements by injured workers

s 125 (prev s 11I) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Action by employer in relation to claims

s 126 (prev s 11J) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.13, amdt 2.14

Lump sum claims—notice by insurers about double compensation etc

s 126A ins A2003-49 s 18

Time for accepting or rejecting claims

pt 6.2 hdg ins 2001 No 81 s 17

Meaning of *insurer* and *given to insurer* for pt 6.2

s 127 (prev s 12) ins 2001 No 81 s 17
sub 2002 No 22 amdt 1.17
renum R9 LA (see 2001 No 81 s 34)

Claim accepted if not rejected within 28 days

s 128 (prev s 12A) ins 1975 No 11
am 1982 No 103; 1991 No 105
sub 1997 No 66; 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Rejecting claims generally

s 129 (prev s 12B) ins 1975 No 11
sub 2001 No 81 s 17
am 2002 No 22 amdts 1.18-1.20
renum R9 LA (see 2001 No 81 s 34)

Rejecting claim within 28 days

s 130 (prev s 12C) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Rejecting claims after 28 days but within 1 year

s 131 (prev s 12D) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Rejecting claims from 1 year

s 132 (prev s 12E) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Liability on claims

pt 6.3 hdg ins 2001 No 81 s 17

Without prejudice payments

s 133 (prev s 12F) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Liability on claim not accepted or rejected

s 134 (prev s 12G) ins 2001 No 81 s 17
am 2002 No 22 amdt 1.21
renum R9 LA (see 2001 No 81 s 34)

Order for refund of overpayments of compensation

s 135 (prev s 12H) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Settlement of claims

pt 6.4 hdg ins 2001 No 81 s 17

Contracting out

s 136 (prev s 12I) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

How worker may commute rights

s 137 (prev s 12J) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

No assignment etc of payout of weekly compensation

s 138 (prev s 12K) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Vocational rehabilitation

ch 7 hdg ins 2001 No 81 s 19

Meaning of approved rehabilitation provider etc

s 139 (prev s 15A) ins 1994 No 68
sub 2001 No 81 s 19
am 2002 No 22 amdt 1.22
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.15

Meaning of vocational rehabilitation

s 140 (prev s 15B) ins 1994 No 68
sub 2001 No 81 s 19
renum R9 LA (see 2001 No 81 s 34)

Meaning of protocol in ch 7 etc

s 141 (prev s 15C) ins 1994 No 68
am 1998 No 54
sub 2001 No 81 s 19
renum R9 LA (see 2001 No 81 s 34)

Vocational rehabilitation

s 142 (prev s 15D) ins 1994 No 68
am 1998 No 54
sub 2001 No 81 s 19
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.16

Endnotes

4 Amendment history

False representation of approval

s 143 (prev s 15E) ins 1994 No 68
am 1998 No 54
sub 2001 No 81 s 19
renum R9 LA (see 2001 No 81 s 34)

Insurance

ch 8 hdg (prev pt 3 hdg) ins 1991 No 105 s 11
renum 2001 No 81 amdt 1.17

Meaning of *compulsory insurance policy*

s 144 (prev 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
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 1.4

Approved insurers

s 145 (prev s 16A) ins 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)

Effect of revocation or suspension of approval

s 146 (prev s 16B) ins 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)

Compulsory insurance—employers

s 147 (prev s 16C) ins 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 1.5

Liability of executive officers

s 148 (prev s 16D) ins 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
om A2003-49 amdt 2.17

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

s 149 (prev s 17) ins 1991 No 105
am 2001 No 44 amdt 1.4368, amdt 1.4369
sub 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)

Nominal insurer entitled to triple premiums

s 150 (prev s 17A) ins 1991 No 105
sub 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 1.6, amdt 1.7

Evidence of maintenance of compulsory insurance policy

s 151 (prev 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
renum R9 LA (see 2001 No 81 s 34)

Self-insurers

s 152 (prev s 17C) ins 1991 No 105
am 2001 No 44 amdt 1.4370, amdt 1.4371
sub 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)

Compulsory insurance—insurers

s 153 (prev s 17D) ins 1991 No 105
am 1998 No 54
sub 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.18

Cancellation

s 154 (prev s 17DA) ins 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 2.19

Cover notes

s 155 (prev s 17E) ins 1997 No 66
am 2001 No 81 s 21
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.20

Information for insurers on application for issue or renewal of policies

s 156 (prev 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
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9
sub A2003-49 s 19

Information for insurers after renewal of policies

s 157 (prev s 18AA) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9
sub A2003-49 s 19

Endnotes

4 Amendment history

Information for insurers after end or cancellation of policies

s 158 (prev s 18AB) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 s 19

Information for new insurers after change of insurers

s 159 (prev s 18AC) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9
sub A2003-49 s 19

Six-monthly information for insurers

s 160 (prev s 18AD) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9
sub A2003-49 s 19

Statutory declarations—false information etc

s 161 (prev s 18AE) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 51 amdt 1.59
sub A2003-49 s 19

Employment after 2nd offence

s 162 (prev s 18AF) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 s 19

Provision of information to Minister

s 163 (prev s 18A) ins 1959 No 12
am 1967 No 44; 1991 No 105; 1998 No 54; 2001 No 81
amdt 1.18, amdts 2.10-2.13
renum R9 LA (see 2001 No 81 s 34)
am A2004-2 amdt 1.60; A2003-49 amdts 2.22-2.25

Nominal insurer

s 164 (prev s 18B) ins 1959 No 12
am 2001 No 44 amdt 1.4372, amdt 1.4373
renum R9 LA (see 2001 No 81 s 34)

Claims for payment by nominal insurer

s 165 (prev s 18C) ins 1959 No 12
am 1969 No 18; 1983 No 69; 1991 No 105; 1997 No 27
renum R9 LA (see 2001 No 81 s 34)

Payments by nominal insurer

s 166 (prev s 18D) ins 1959 No 12
sub 1969 No 18
am 1983 No 69; 1991 No 105; 2001 No 81 amdt 2.14
renum R9 LA (see 2001 No 81 s 34)

Reopening of agreements and awards

s 167 (prev 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
renum R9 LA (see 2001 No 81 s 34)

Deciding or redeciding claim

s 168 (prev s 18EAA) ins 2001 No 81 amdt 2.15
renum R9 LA (see 2001 No 81 s 34)

Power of Supreme Court to set aside certain agreements

s 169 (prev s 18EA) ins 1969 No 18
am 1991 No 105; 1998 No 54; 2001 No 81 amdt 1.20,
amds 2.16-2.18
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.26

Intervention by nominal insurer

s 170 (prev s 18F) ins 1959 No 12
am 1967 No 44; 1991 No 105; 1998 No 54
sub 2001 No 81 s 23
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.28

Nominal insurer may act

s 171 (prev s 18FA) ins 2001 No 81 s 23
renum R9 LA (see 2001 No 81 s 34)

Effects of payment by nominal insurer

s 172 (prev s 18G) ins 1959 No 12
am 1969 No 18; 2000 No 74 s 6
sub 2001 No 81 s 24
renum R9 LA (see 2001 No 81 s 34)

Funds for payments by nominal insurer

s 173 (prev s 18H) ins 1959 No 12
am 1991 No 105; 1997 No 66; 2001 No 81 amds 1.21-1.26;
2002 No 22 amdt 1.23
renum R9 LA (see 2001 No 81 s 34)

Information and assistance by employer to nominal insurer

s 174 (prev s 18J) ins 1959 No 12
am 1967 No 44; 1991 No 105; 1998 No 54; 2001 No 81 amds
2.19-2.21
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.30, amdt 2.31

Endnotes

4 Amendment history

Proceedings to be in the name of 'The Nominal Insurer'

s 175 (prev s 18K) ins 1959 No 12
am 1991 No 105
renum R9 LA (see 2001 No 81 s 34)

Premiums—maximum rates

s 176 (prev s 20) am 1967 No 44
sub 1991 No 105
am 1998 No 54
sub 2001 No 81 amdt 1.27
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.32, amdt 2.33

Premiums—remuneration for professional sporting activity

s 177 (prev s 20AA) ins 1995 No 52
am 2001 No 81 amdt 1.28
renum R9 LA (see 2001 No 81 s 34)

Workers rights to information

s 178 (prev 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
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.34

Regulations to allow Minister to authorise people

s 179 (prev s 21AA) ins 2001 No 81 s 25
renum R9 LA (see 2001 No 81 s 34)

Common law damages

ch 9 hdg (prev pt 4 hdg) ins 1991 No 105 s 17
renum 2001 No 81 amdt 1.31
sub A2003-49 amdt 1.8

Interpretation and application

pt 9.1 hdg ins A2003-49 amdt 1.8

Definitions for ch 9

s 180 hdg (prev s 21A hdg) sub 2001 No 81 amdt 2.22
renum R9 LA (see 2001 No 81 s 34)
s 180 (prev s 21A) ins 1991 No 105
am 2001 No 81 amdt 1.32, amdt 2.23, amdt 2.24
renum R9 LA (see 2001 No 81 s 34)
def **compensation** om 2001 No 81 amdt 1.33

References to person who recovers damage etc

s 181 (prev s 21AB) ins 2001 No 81 amdt 2.24
renum R9 LA (see 2001 No 81 s 34)

Payments by nominal insurer

s 182 (prev s 21B) ins 1991 No 105
 am 2001 No 81 amdt 1.34, amdt 1.35
 renum R9 LA (see 2001 No 81 s 34)
 am 2002 No 49 amdt 3.258

Choice of law

pt 9.2 hdg ins A2003-49 amdt 1.9

Definitions for pt 9.2

s 182A ins A2003-49 amdt 1.9

Meaning of substantive law

s 182B ins A2003-49 amdt 1.9

Meaning of damages claim

s 182C ins A2003-49 amdt 1.9

Applicable substantive law for damages claims

s 182D ins A2003-49 amdt 1.9

Claims to which pt 9.2 applies

s 182E ins A2003-49 amdt 1.9

Compensation and common law damages

pt 9.3 hdg ins A2003-49 amdt 1.9

Lump sum claims—notice by lawyers to clients about repayment requirements

s 182F ins A2003-49 s 20

Remedies against employer and stranger

s 183 hdg sub A2003-49 s 21
 s 183 (prev s 22) am 1952 No 4; 1959 No 12; 1991 No 105; 2001
 No 81 amdt 1.36
 renum R9 LA (see 2001 No 81 s 34)
 am A2003-49 s 22, s 23

No compensation if damages received

s 184 (prev s 23) am 1962 No 10; 1983 No 69; 1991 No 105
 sub 1997 No 27
 am 2001 No 81 amdt 1.36
 renum R9 LA (see 2001 No 81 s 34)
 sub A2003-49 s 24

Dependants recovering damages and not claiming compensation

s 185 (prev s 23A) ins 1991 No 105
 am 2001 No 81 amdt 1.36, amdt 1.37
 renum R9 LA (see 2001 No 81 s 34)
 am A2003-49 ss 25-27

Endnotes

4 Amendment history

Discharge of liability out of payments into court

s 186 (prev s 23B) ins 1991 No 105
renum R9 LA (see 2001 No 81 s 34)

Inspection

ch 10 hdg (prev pt 5 hdg) ins 1991 No 105 s 18
renum 2001 No 81 amdt 1.38

Definitions for ch 10

s 187 hdg (prev s 23C hdg) am 2001 No 81 amdt 1.39
renum R9 LA (see 2001 No 81 s 34)
s 187 (prev s 23C) ins 1991 No 105
sub 2001 No 81 amdt 2.25
am 2001 No 81 amdt 1.40
renum R9 LA (see 2001 No 81 s 34)

Inspectors

s 188 (prev s 23D) ins 1991 No 105
sub 1994 No 97; 2001 No 81 s 26
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 3.259

Identity cards

s 189 (prev s 23E) ins 1991 No 105
sub 1994 No 97
am 1998 No 54
sub 2001 No 81 s 26
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.35, amdt 2.36

Provision of information to inspectors

s 190 (prev s 23F) ins 1991 No 105
am 1997 No 27; 1997 No 66; 1998 No 54
sub 2001 No 81 amdt 1.41
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9; A2003-49 s 28, amdt 2.37

Entry and inspection of premises

s 191 (prev s 23G) ins 1991 No 105
am 1997 No 66; 1998 No 54; 2001 No 81 amdt 2.26
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.38

Consent to entry and inspection

s 192 (prev s 23H) ins 1991 No 105
renum R9 LA (see 2001 No 81 s 34)

Search warrants

s 193 (prev s 23I) ins 1991 No 105
am 2002 No 11 amdt 2.113
renum R9 LA (see 2001 No 81 s 34)

Obstruction or hindrance of inspector

s 194 (prev s 23J) ins 2001 No 81 s 27
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 2.40

Procedure for payment of compensation

ch 11 hdg (prev pt 6 hdg) ins 1991 No 105 s 18
renum 2001 No 81 amdt 1.42

Conciliation and arbitration

s 195 hdg sub 2002 No 22 amdt 1.24
renum R9 LA (see 2001 No 81 s 34)
s 195 (prev s 24) am 1991 No 105; 2001 No 81 amdt 1.43; 2002
No 22 amdt 1.25
renum R9 LA (see 2001 No 81 s 34)

Admissibility of statements by injured workers

s 196 (prev s 25A) ins 1991 No 105
am 1997 No 96; 2001 No 81 amdt 2.27
renum R9 LA (see 2001 No 81 s 34)

Appeals

s 197 (prev 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
renum R9 LA (see 2001 No 81 s 34)

On-the-spot fines

ch 12 hdg (prev pt 6B hdg) ins 1997 No 66
renum 2001 No 81 amdt 1.46

Definitions for ch 12

s 198 (prev s 26G) ins 1997 No 66
am 2001 No 81 amdt 1.47
renum R9 LA (see 2001 No 81 s 34)
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 199 (prev 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
renum R9 LA (see 2001 No 81 s 34)

Final infringement notices

s 200 (prev s 26J) ins 1997 No 66
am 1999 No 82 sch; 2001 No 44 amdt 1.4381; 2001 No 81
amdt 1.49
renum R9 LA (see 2001 No 81 s 34)

Endnotes

4 Amendment history

Discharge of liability for prescribed offences

s 201 (prev s 26K) ins 1997 No 66
renum R9 LA (see 2001 No 81 s 34)

Application for withdrawal of infringement notice

s 202 (prev s 26L) ins 1997 No 66
am 1999 No 82 s 16 sch; 2001 No 81 amdt 1.49
renum R9 LA (see 2001 No 81 s 34)

Withdrawal of infringement notices

s 203 (prev s 26M) ins 1997 No 66
am 1999 No 82 sch
renum R9 LA (see 2001 No 81 s 34)

Prosecution of prescribed offences

s 204 (prev s 26N) ins 1997 No 66
am 1999 No 82 sch
renum R9 LA (see 2001 No 81 s 34)

Non-antecedent value of infringement notice offences

s 205 (prev s 26P) ins 1997 No 66
am 2001 No 81 amdt 1.49
renum R9 LA (see 2001 No 81 s 34)

Service of notices under ch 12

s 206 (prev s 26Q) ins 1997 No 66
am 2001 No 81 amdt 1.49, amdt 2.29
renum R9 LA (see 2001 No 81 s 34)

Evidence for ch 12

s 207 (prev s 26R) ins 1997 No 66
am 1999 No 82 sch; 2001 No 81 amdt 1.49
renum R9 LA (see 2001 No 81 s 34)

Review of decisions by administrative appeals tribunal

ch 13 hdg ins 2001 No 81 s 28
sub 2002 No 22 amdt 1.26

Notice of reviewable decisions to be given to affected people

s 208 (prev s 26RA) ins 2001 No 81 s 28
renum R9 LA (see 2001 No 81 s 34)

Review by administrative appeals tribunal of reviewable decisions

s 209 (prev s 26RB) ins 2001 No 81 s 28
renum R9 LA (see 2001 No 81 s 34)

Miscellaneous

ch 14 hdg (prev pt 7 hdg) renum 2001 No 81 amdt 1.50

Confidentiality

s 210 (prev s 26RC) ins 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)

sub A2003-49 amdt 2.41**Medical referees**

s 211 (prev s 15) reloc as s 26RD 2001 No 81 amdt 1.16
am 2002 No 22 amdt 1.27, amdt 1.28
renum as s 211 R9 LA (see 2001 No 81 s 34)

Time for beginning prosecutions

s 212 (prev s 26S) ins 1997 No 66
sub 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 s 29
s 212 (3), (4) exp 1 July 2004 (s 212 (4))

False information etc

s 213 (prev s 26T) ins 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 2.42

Criminal liability of executive officers

s 214 (prev s 26U) ins 2001 No 81 s 29
am 2002 No 11 amdt 2.114
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 51 amdt 1.60
sub A2003-49 amdt 2.42

Criminal liability of officers of corporation

s 215 (prev s 27) ins 1991 No 105
sub 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)
om A2003-49 amdt 2.42

Minister must take advice

s 216 (prev s 27A) ins 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)

Rules of court

s 217 (prev s 27B) ins 1991 No 105
am 1994 No 60; 1995 No 46
sub 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)

Directions about procedure

s 218 (prev s 27C) ins 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)

References to Workers' Compensation Act

s 219 (prev s 27CA) ins 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)

Endnotes

4 Amendment history

Funds for administration of Act

s 220 (prev s 27D) ins 1998 No 31
am 2001 No 81 amdts 1.51-1.55; 2002 No 22 amdt 1.29
renum R9 LA (see 2001 No 81 s 34)

Determination of fees

s 221 (prev 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
renum R9 LA (see 2001 No 81 s 34)

Approved forms

s 222 (prev s 29) ins 2001 No 44 amdt 1.4383
renum R9 LA (see 2001 No 81 s 34)
(4)-(7) exp 12 September 2002 (s 222 (7))

Regulation-making power

s 223 (prev s 30) ins 2001 No 44 amdt 1.4383
am 2001 No 81 s 30; 2002 No 22 amdt 1.30, amdt 1.31
renum R9 LA (see 2001 No 81 s 34)

Temporary provisions for acts of terrorism

ch 14A hdg renum as ch 15 hdg

Temporary provisions for acts of terrorism

ch 15 hdg (prev ch 14A hdg) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2004 (s 232)

Application of ch 15 to insurers

s 224 (prev s 30A) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 4
exp 1 October 2006 (s 232)

Definitions for ch 15

s 225 (prev s 30B) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2006 (s 232)

Meaning of *act of terrorism* for ch 15

s 226 (prev s 30C) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2006 (s 232)

Terrorism cover temporary reinsurance fund

s 227 (prev s 30D) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2006 (s 232)

Entitlement of insurers to reimbursement from temporary fund

s 228 (prev s 30E) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 5
exp 1 October 2006 (s 232)

Payments out of temporary fund

s 229 (prev s 30F) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2006 (s 232)

Regulations about temporary fund

s 230 (prev s 30G) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2006 (s 232)

Exclusion of Corporations legislation

s 231 (prev s 30H) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2006 (s 232)

Expiry of ch 15

s 232 (prev s 30I) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
sub A2003-32 s 6
exp 1 October 2006 (s 232)

Transitional—Workers Compensation Amendment Act 2001

ch 16 hdg (prev ch 15 hdg) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 1.10
exp 1 July 2004 (s 246)

Definitions for ch 16

s 233 (prev s 32) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

What injuries does this Act apply to?

s 234 (prev s 33) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

What happens to injuries before the commencement of the amendment Act?

s 235 (prev s 34) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Endnotes

4 Amendment history

Determined categories of workers

s 236 (prev s 35) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Approved insurers

s 237 (prev s 36) ins 2001 No 81 s 32
sub 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Exempt employers

s 238 (prev s 37) ins 2001 No 81 s 32
sub 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Prescribed insurance policies

s 239 (prev s 37A) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Approved rehabilitation providers

s 240 (prev s 37B) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Work experience students

s 240A ins as mod SL 2002 No 20 pt 12, sch 4
exp 1 July 2004 (s 246)

Children and Young People Act and compensation

s 241 (prev s 37C) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Periodic Detention Act and compensation

s 242 (prev s 37D) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Remand Centres Act and compensation

s 243 (prev s 37E) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Supervision of Offenders (Community Service Orders) Act and compensation

s 244 (prev s 37F) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Modification of ch 16's operation

s 245 (prev s 38) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Application of Criminal Code—Workers Compensation Amendment Act 2003

s 245A ins A2003-32 s 7
exp 1 July 2004 (s 246)

Auditors' certificates—Workers Compensation Amendment Act 2003

s 245B ins A2003-32 s 7
exp 1 July 2004 (s 246)

Expiry of ch 16

s 246 (prev s 39) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Transitional—Workers Compensation Amendment Act 2003 (No 2)

ch 17 hdg ins A2003-49 amdt 1.11
exp 2 years after commences (s 249)

Definitions for ch 17

s 247 ins A2003-49 amdt 1.11
exp 2 years after commences (s 249)

Application of cross-border scheme provisions

s 248 ins A2003-49 amdt 1.11
exp 2 years after commences (s 249)

Expiry of ch 17

s 249 ins A2003-49 amdt 1.11
exp 2 years after commences (s 249)

Endnotes

4 Amendment history

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
am 2002 No 49 amdt 1.12

Adjacent areas

- sch 2 hdg am 1991 No 105
om 2001 No 81 s 33
ins A2003-49 amdt 1.12
- 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
ins A2003-49 amdt 1.12

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
om A2003-41 amdt 3.520
- def **approved insurer** ins 2001 No 81 s 33
- def **approved rehabilitation provider** ins 2001 No 81 s 33
sub A2003-49 amdt 2.43
- 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
sub A2003-41 amdt 3.521

def ***awe indexed*** ins 2001 No 81 s 33
def ***boilermakers deafness*** ins 2001 No 81 s 33
def ***child*** ins 2001 No 81 s 33
sub A2004-2 amdt 1.61
def ***chiropractor*** reloc from s 6 (1) 2001 No 81 amdt 1.5
def ***committee*** ins 2002 No 22 amdt 1.33
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 ***damages*** ins A2003-49 amdt 1.13
def ***damages claim*** ins A2003-49 amdt 1.13
def ***deductible proportion*** ins 2001 No 81 s 33
def ***defined offence*** reloc from s 6 (1) 2001 No 81 amdt 1.5
om 2002 No 11 amdt 2.115
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 ***domestic partner*** ins A2004-2 amdt 1.62
def ***employer*** ins 2001 No 81 s 33
am R7 LA; A2003-49 amdt 1.14
def ***employment*** ins A2003-49 amdt 1.15
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
sub 2002 No 22 amdt 1.34
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
sub 2002 No 22 amdt 1.35
def ***injury*** ins 2001 No 81 s 33
am A2003-49 amdt 1.16
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
sub 2002 No 22 amdt 1.36
def ***inspector*** reloc from s 6 (1) 2001 No 81 amdt 1.5
om R13 LA
ins 2002 No 49 amdt 3.260

Endnotes

4 Amendment history

def **loss** ins 2001 No 81 s 33
def **lump sum claim** ins A2003-49 s 31
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
am A2004-2 amdt 1.63, amdt 1.64
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 **physiotherapist** reloc from s 6 (1) 2001 No 81 amdt 1.5
def **professional sporting activity** reloc from s 6 (1) 2001
No 81 amdt 1.5
def **protocol** ins 2001 No 81 s 33
def **recognised auditor** ins A2003-32 s 8
am A2003-49 s 32
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
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
om A2004-2 amdt 1.65
def **statutory floor** ins 2001 No 81 s 33
def **substantial** ins 2001 No 81 s 33
def **substantive law** ins A2003-49 amdt 1.17
def **Territory or State of connection** ins A2003-49 amdt 1.17
def **Territory worker** ins 2001 No 81 s 33
sub A2003-49 amdt 1.17
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
sub A2003-49 amdt 1.18

def **workers compensation law** ins A2003-49 amdt 1.18
def **workplace injury** ins 2001 No 81 s 33
 sub 2002 No 22 amdt 1.37
def **work-related injury** ins A2003-49 amdt 1.18

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

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
7	<u>Act 2001 No 81</u>	28 September 2001
8	<u>Act 2002 No 11</u>	30 May 2002
9	Act 2001 No 22	1 July 2002
10	Act 2002 No 22	2 July 2002
11	Act 2002 No 22	13 September 2002
12	Act 2002 No 22	29 October 2002
13	Act 2002 No 51	1 January 2003
14*	A2002-51	17 January 2003
14 (RI)	A2002-51	31 January 2005
15	A2003-32	1 July 2003
15 (RI)	A2003-32	31 January 2005
16	A2003-41	9 October 2003

Endnotes

6 Renumbered provisions

Republication No	Amendments to	Republication date
16 (RI)	A2003-41	31 January 2005
17	A2004-2	22 March 2004

6 Renumbered provisions

This Act was renumbered under the *Legislation Act 2001* in R9 (see Act 2001 No 81). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R12.

7 Modifications of republished law with temporary effect

The following modifications have not been included in this republication:

Workers Compensation Regulations 2002 SL2002-20 sch 4 (as am SL2002-29 reg 15)

15 New schedule 4

insert

Schedule 4 Modification of Act, chapter 16

(see reg 101)

4.1 New section 240A

insert

240A Work experience students

- (1) An individual is taken not to be a *worker* employed by a person (the *principal*) for the current Act, section 14 (Trainees), if—
 - (a) the engagement of the individual by the principal is arranged by an educational institution at which the individual is enrolled; and

- (b) the engagement is part of a work experience program (however described) run by the educational institution.

Example of work experience program

work placement program

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

- (2) In this section:

educational institution means—

- (a) a school, college or other educational institution established or maintained on behalf of the Territory; or
- (b) a school registered, or provisionally registered, under the *Education Act 1937*, part 3 (Registered schools); or
- (c) an educational institution established under a Territory law or a law of the Commonwealth or a State.

8 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

<p>Workers Compensation Amendment Act 2003 (No 2) A2003-49</p>
--

4 Who is a worker? Section 8 (3) (a) to (d)

substitute

- (a) section 156 (6), definition of ***employer's estimate***, paragraphs (a) and (b) (Information for insurers on application for issue or renewal of policies);

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8 Uncommenced amendments

(b) section 160 (1) (a) and (b) (Six-monthly information for insurers);

(c) section 190 (1) (b) (Provision of information to inspectors).

5 Trainees New section 14 (3A)

insert

(3A) An individual is also taken not to be a *worker* employed by the principal if—

(a) the individual is an adult with a disability; and

(b) the engagement of the individual by the principal is arranged by a specialist disability employment service provider; and

(c) the engagement is part of a work experience program (however described) organised by the provider to help adults with disabilities to work.

Example of work experience program

work placement program

6 Section 14 (4)

omit

(4) In subsection (3):

substitute

(4) In this section:

7 Section 14 (4), new definitions

insert

adult with a disability means a person who—

(a) is 16 years old or older; and

- (b) has a physical, intellectual or psychiatric disability; and
- (c) is likely to suffer from the disability permanently or for an extended period.

specialist disability employment service provider means an organisation (whether or not the organisation is incorporated) that—

- (a) provides employment services for people with disabilities; and
- (b) is not carried on for the financial benefit of the organisation's members.

8 Section 14

renumber subsections when Act next republished under Legislation Act

9 New section 17A

insert

17A Volunteers

To remove any doubt, an individual who is engaged to perform work for someone else, and who receives no payment for the work (apart from any payment for expenses), is taken not to be a *worker* unless the individual is taken to be a worker under any of the following sections:

- section 14 (Trainees)
- section 17 (Religious workers)
- section 18 (Commercial voluntary workers)
- section 19 (Public interest voluntary workers).

10 Commercial voluntary workers Section 18 (1)

substitute

- (1) This section applies if—

Endnotes

8 Uncommenced amendments

- (a) an individual (a *commercial volunteer*) is engaged under an arrangement by which the commercial volunteer performs work that is for (or incidental to) an enterprise, trade or business carried on by someone else (the *principal*); and
- (b) the principal carries on the enterprise, trade or business for—
 - (i) if the principal is an individual—the financial benefit of the principal; or
 - (ii) if the principal is a corporation—the financial benefit of the corporation’s members; and
- (c) the commercial volunteer receives no payment for the work (apart from any payment for expenses).

Examples

- 1 The Very Big Motocross Event Company (a corporation incorporated under the Corporations Act) promotes an event known as the ‘Mega Motocross’. The corporation engages a number of motocross enthusiasts as marshals for the event, but the marshals are volunteers (they are not paid). The Mega Motocross is an ‘enterprise, trade or business’ carried on for the financial benefit of the corporation’s members. The marshals are therefore commercial volunteers to whom this section applies.
- 2 The Motorboat and Jet-ski Club of Canberra Inc. (a not-for-profit body incorporated under the *Associations Incorporation Act 1991*) promotes an annual event known as the ‘Big Splash’. The club engages a number of enthusiasts as marshals for the event, but the marshals are volunteers (they are not paid). The Big Splash is not an ‘enterprise, trade or business’ carried on for the financial benefit of the club’s members. The marshals are therefore not commercial volunteers to whom this section applies.
- 3 The Homeless Trust is an organisation incorporated under statute whose only object is to assist the homeless in Canberra. The trust runs an opportunity shop in Tuggeranong, which earns a small profit. The shop is staffed by unpaid volunteers. The shop’s profits are used to assist the homeless. The shop is an ‘enterprise, trade or business’, but it is not carried on for the financial benefit of the trust’s members. The volunteer staff of the shop are therefore not commercial volunteers to whom this section applies.
- 4 If the Homeless Trust described in example 3 were an unincorporated group of individuals (or a single individual), but carried on the same activities for the same single purpose, the shop concerned would be an ‘enterprise, trade

or business', but would not be carried on for the financial benefit of the individuals (or individual) by whom the trust is constituted (who would be the *principals*, or *principal*). The volunteer staff of the shop would therefore also not be commercial volunteers to whom this section applies.

11 Public interest voluntary workers Section 19 (1)

substitute

- (1) The Minister may make a declaration for this section in relation to work (*public interest voluntary work*) undertaken for a stated entity if the Minister considers that making the declaration is necessary or desirable in the public interest.

Example

As noted in section 18 (1), example 2, the volunteer marshals for the annual Big Splash event described in that example would not be 'commercial volunteers' to whom section 18 applies. Therefore, apart from section 19, they would not be taken to be workers for this Act (see s 17A (Volunteers)). The club promoting the event would therefore not normally be required to take out compulsory workers compensation insurance under this Act to cover the work of the marshals.

However, the Big Splash is potentially very dangerous for the volunteer marshals, as they must be present in their own boats on Lake Burley Griffin while the participants perform difficult stunts in motorboats and jet skis at high speed nearby. In previous years, volunteer marshals have been seriously injured at the event, and the Minister considers that the club did not take out adequate insurance cover for the work of the marshals.

Taking these matters into account, the Minister may consider that it is necessary or desirable in the public interest that the work of the volunteer marshals be declared to be public interest voluntary work for this section.

12 Section 96

substitute

96 Obligations of insurer on being notified of injury

- (1) Within 3 business days after the day an insurer receives an injury notice, the insurer must take action under the insurer's injury management program.

Endnotes

Maximum penalty: 10 penalty units.

- (2) Within 3 business days after the day an insurer receives an injury notice, if there are reasonable grounds for the insurer to believe that the injury is a significant injury, the insurer must make contact under the insurer's injury management program with each of the following people:
- (a) the injured worker;
 - (b) the employer (unless the employer is a self-insurer);
 - (c) the worker's nominated treating doctor (if appropriate and practical).

Maximum penalty: 30 penalty units.

- (3) If a workplace injury results in the worker being incapacitated for work for a continuous period of longer than 7 days, within 3 business days after the day the 1st continuous period of 7 days incapacity ends, the insurer must make contact under the insurer's injury management program with each of the following people:
- (a) the injured worker;
 - (b) the employer (unless the employer is a self-insurer);
 - (c) the worker's nominated treating doctor (if appropriate and practical).

Maximum penalty: 30 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) In this section:

continuous period, in relation to a worker's incapacity—a period is a ***continuous period***—

- (a) whether or not any of the days in the period are business days; and

- (b) whether or not the incapacity is total or partial or a combination of both.

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.

**13 Medical certificates and claims for compensation
Section 118 (2)**

substitute

- (2) A medical certificate required to accompany a claim for weekly compensation must—
- (a) comply with the requirements for medical assessments prescribed under the regulations; and
 - (b) include a statement of the doctor's assessment of whether the worker's condition is consistent with the worker's employment being a substantial contributing factor to the injury.

**14 Time for taking proceedings generally
Section 120**

omit

A proceeding

substitute

- (1) A proceeding

15 New section 120 (2)

insert

- (2) However, a proceeding for the recovery of compensation for an injury may also continue if—
- (a) the Magistrates Court allows the proceeding to be maintained under section 120A (Proceedings on late claims); or

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- (b) the proceeding may be maintained under section 124 (No notice or defective or inaccurate notice).

16 Section 120, notes 1 and 2

substitute

Note An injured worker may give notice of an injury by making an entry in a register of injuries (see s 92).

17 New section 120A

insert

120A Proceedings on late claims

- (1) A person may apply to the Magistrates Court to allow a proceeding for the recovery of compensation to be maintained.

Note Section 120 (2) allows the proceeding to be continued even if the claim was made after the end of the time periods set out in s 120 (1), if the Magistrates Court allows it to be maintained under this section.

- (2) The Magistrates Court may allow the application if the court considers that it is just and reasonable to allow the proceeding to be maintained.
- (3) Before making a decision about whether to allow the application, the Magistrates Court may hear anyone likely to be affected by the proceeding if the court considers it appropriate.
- (4) In considering whether to allow the application, the Magistrates Court must have regard to all the circumstances of the case, including the following:
- (a) the length of and reasons for the delay in making the claim;
 - (b) the extent to which, having regard to the delay, there is or is likely to be prejudice to the employer;
 - (c) the conduct of the employer and the employer's insurer after the cause of action accrued to the claimant, including any steps

taken by the employer or the employer's insurer to make available to the claimant ways of working out facts that were or might have been relevant to the cause of action;

- (d) the duration of any disability of the worker arising at the time of or after the injury giving rise to the claim;
 - (e) the extent to which the claimant acted promptly and reasonably once the claimant knew that the injury to, or death of, the worker could be capable at that time of giving rise to a claim for compensation;
 - (f) any steps taken by the claimant to obtain medical, legal or other expert advice and the nature of any advice received.
- (5) In this section:
- claimant*, if the claim is made by a person other than the worker, includes the worker.

18 New section 126A

in part 6.1, insert

126A Lump sum claims—notice by insurers about double compensation etc

- (1) This section applies if an insurer is given notice by an employer of a lump sum claim, and the insurer is liable to indemnify the employer for the claim.
- (2) After the insurer is given notice of the claim, the insurer must give the claimant information explaining the requirements of the following sections for the repayment of compensation together with the employer's legal costs as between party and party:
 - section 36F (No ACT compensation if external compensation received)
 - section 183 (Remedies against employer and stranger)
 - section 184 (No compensation if damages received)

Endnotes

8 Uncommenced amendments

- section 185 (Dependants recovering damages and not claiming compensation).

Maximum penalty: 50 penalty units.

Note If a form is approved under s 222 for information to be given by an insurer under this provision, the form must be used.

- (3) An offence against this section is a strict liability offence.

19 Sections 156 to 162

substitute

156 Information for insurers on application for issue or renewal of policies

- (1) This section applies if an employer applies to an insurer for the issue or renewal of a compulsory insurance policy for a particular period (the *proposed insurance period*).
- (2) The employer must give the insurer, with the application, a statutory declaration in relation to the proposed insurance period stating the employer's estimate for the period.

Maximum penalty: 250 penalty units, imprisonment for 2 years or both.

Note One or more fault elements apply to this offence (see Criminal Code, s 22).

- (3) The employer must give the insurer, with the application, a statutory declaration in relation to the proposed insurance period stating the employer's estimate for the period.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
- (5) This section does not apply to a non-business employer.
- (6) In this section:

employer's estimate, for a proposed insurance period, means the employer's estimate of the following:

- (a) the number of Territory workers in each determined category to be employed by the employer in the period;
- (b) the total wages to be paid to Territory workers in each determined category in the period;
- (c) the number of paid and unpaid workers who will work for the employer in the period;
- (d) the approximate amount of time each paid and unpaid worker will work for the employer in the period.

Note An employer who makes a statement in a statutory declaration that is false, misleading or incomplete may commit an offence (see s 161 and s 213).

157 Information for insurers after renewal of policies

- (1) This section applies if an insurance policy taken out by an employer is renewed.
- (2) Within 30 days after the day the policy is renewed, the employer must give the insurer a certificate from a recognised auditor stating the total wages paid by the employer to Territory workers in the period from the day the policy was issued or (if it had already been renewed) last renewed to the day before the latest renewal.

Maximum penalty: 250 penalty units, imprisonment for 2 years or both.

Note One or more fault elements apply to this offence (see Criminal Code, s 22).

- (3) Within 30 days after the day the policy is renewed, the employer must give the insurer a certificate from a recognised auditor stating the total wages paid by the employer to Territory workers in the period from the day the policy was issued or (if it had already been renewed) last renewed to the day before the latest renewal.

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Maximum penalty: 50 penalty units.

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see s 213).

- (4) An offence against subsection (3) is a strict liability offence.
- (5) This section does not apply to a non-business employer.

158 Information for insurers after end or cancellation of policies

- (1) This section applies if a compulsory insurance policy taken out by an employer ends or is cancelled, and the policy is not renewed.
- (2) Within 30 days after the day the policy ends or is cancelled, the employer must give the insurer a certificate from a recognised auditor stating the total wages paid by the employer to Territory workers in the period during which the policy was in force from the day it was issued or (if it had been renewed) last renewed.

Maximum penalty: 50 penalty units.

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see s 213).

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply to a non-business employer.

159 Information for new insurers after change of insurers

- (1) This section applies if—
 - (a) an insurer (the *current insurer*) issues a compulsory insurance policy (the *current policy*) to an employer; and
 - (b) immediately before the issue of the current policy, the employer was covered by a compulsory insurance policy (the *previous policy*) issued by a different insurer.

- (2) Within 30 days after the day the current policy is issued, the employer must give the current insurer a copy of the certificate mentioned in section 158 (2) in relation to the period from the day the previous policy was issued or (if it had been renewed) last renewed to the day before the current policy was issued.

Maximum penalty: 250 penalty units, imprisonment for 2 years or both.

Note One or more fault elements apply to this offence (see Criminal Code, s 22).

- (3) Within 30 days after the day the current policy is issued, the employer must give the current insurer a copy of the certificate mentioned in section 158 (2) in relation to the period from the day the previous policy was issued or (if it had been renewed) last renewed, to the day before the current policy was issued.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
- (5) This section does not apply to a non-business employer.

160 Six-monthly information for insurers

- (1) If an employer has a compulsory insurance policy for a period of longer than 6 months, the employer must, within 30 days after the end of each reporting period, give the insurer a statutory declaration setting out—
- (a) the number of Territory workers in each determined category employed by the employer in the reporting period;
 - (b) the total wages paid to Territory workers in each determined category in the reporting period; and
 - (c) the number of paid and unpaid workers working for the employer in the reporting period; and

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- (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 An employer who makes a statement in a statutory declaration that is false, misleading or incomplete may commit an offence (see s 161 and s 213).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a non-business employer.
- (4) In this section:

reporting period, in relation to a compulsory insurance policy, means each of the following:

- (a) the period (the *1st period*) of 6 months beginning on the 1st day of the policy;
- (b) each successive period (a *successive period*) of 6 months following the 1st period during which the policy is in force, other than a successive period that ends when the policy ends.

161 Statutory declarations—false information etc

- (1) A person commits an offence if—
- (a) the person makes a statement in a relevant statutory declaration; and
- (b) the person does so knowing that the statement—
- (i) is false or misleading; or
- (ii) omits anything without which the statement is misleading.

Maximum penalty:

- (a) for a 1st offence—1 250 penalty units; or
- (b) for a 2nd or subsequent offence—10 000 penalty units, imprisonment for 10 years or both.

- (2) A person commits an offence if—
- (a) the person makes a statement in a relevant statutory declaration; and
 - (b) the person does so reckless of whether the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading.

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

- (3) Subsections (1) (b) (i) and (2) (b) (i) do not apply if the statement is not false or misleading in a material particular.
- (4) Subsections (1) (b) (ii) and (2) (b) (ii) do not apply if the omission does not make the statement misleading in a material particular.
- (5) In this section:

relevant statutory declaration means a statutory declaration provided by an employer for either of the following provisions:

- section 156 (2) (Information for insurers on application for issue or renewal of policies)
- section 160 (1) (Six-monthly information for insurers).

162 Employment after 2nd offence

- (1) For this section, an employer has been *convicted of an offence* if the employer has been convicted of a 2nd or subsequent offence against any of the following sections:
- section 147 (Compulsory insurance—employers)
 - section 156 (Information for insurers on application for issue or renewal of policies)
 - section 157 (Information for insurers after renewal of policies)
 - section 158 (Information for insurers after end or cancellation of policies)

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- section 159 (Information for new insurers after change of insurers)
 - section 160 (Six-monthly information for insurers)
 - section 214 (Criminal liability of executive officers).
- (2) Subsection (1) only applies to an offence against section 214 if the offence relates to the contravention by a corporation of another section mentioned in subsection (1).
- (3) An employer who has been convicted of an offence within the last 5 years must not employ a Territory worker.
- Maximum penalty: imprisonment for 5 years.

20 New section 182F

before section 183, insert

182F Lump sum claims—notice by lawyers to clients about repayment requirements

- (1) This section applies if a person proposes to engage a lawyer to act for the person in a claim for damages in relation to an injury for which a claim for compensation has been made, or may be made, under this Act or under the statutory workers compensation scheme of a place outside the ACT.
- (2) Before accepting the engagement, the lawyer must give the person information explaining the requirements of the following sections for the repayment of compensation together with the employer's legal costs as between party and party:
- section 36F (No ACT compensation if external compensation received)
 - section 183 (Remedies against employer and stranger)
 - section 184 (No compensation if damages received)
 - section 185 (Dependants recovering damages and not claiming compensation).

Maximum penalty: 50 penalty units.

Note If a form is approved under s 222 for information to be given by a lawyer under this provision, the form must be used.

- (3) Before accepting the engagement, the lawyer must tell the person the likely costs and consequences in relation to the payment of costs if the person pursues the claim for damages.

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.

21 Section 183 heading

substitute

183 Remedies against employer and stranger

22 Section 183

omit

If an injury

substitute

- (1) If an injury

23 New section 183 (2)

insert

- (2) If an amount of compensation is paid in relation to a lump sum claim, this section applies as if a reference to **amounts** paid under this Act by an employer to a worker included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.

24 Section 184

substitute

184 No compensation if damages received

- (1) Compensation under this Act (*ACT compensation*) is not payable in relation to a worker's injury to the extent that, independently of this Act, a judgment or agreement for damages (*independent damages*) has been obtained in relation to the same injury.
- (2) If a person receives ACT compensation from an employer in relation to a worker's injury and later receives independent damages in relation to the same injury, the employer is entitled to recover from the person the recoverable amount.
- (3) For subsection (2), the lesser of the following amounts is the recoverable amount:
 - (a) the amount of ACT compensation;
 - (b) the amount of the independent damages.
- (4) If an amount of ACT compensation is paid in relation to a lump sum claim, subsection (3) (a) applies as if the reference to the *amount of ACT compensation* paid by the employer included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.
- (5) An employer cannot recover an amount under this section in relation to an injury if the employer has recovered an amount under section 36F (No ACT compensation if external compensation received) in relation to the same injury.

**25 Dependants recovering damages and not claiming compensation
Section 185 (2) (b)**

substitute

- (b) in any other case—the total amount of compensation paid to the dependants of the worker in relation to the worker's injury.

26 Section 185 (3), definition of C

substitute

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

27 New section 185 (5)

insert

- (5) If an amount of compensation was paid (or is payable) to the worker in relation to a lump sum claim, subsections (2) and (3) apply as if a reference to *the total amount of compensation* paid by the employer included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.

**28 Provision of information to inspectors
Section 190 (1) (b)**

substitute

- (b) a statutory declaration setting out—
- (i) the number of Territory workers in each determined category employed by the employer in the period; and
 - (ii) the total wages paid to Territory workers in each determined category in the reporting period.

**29 Time for beginning prosecutions
Section 212 (1)**

substitute

- (1) A prosecution for an offence against any of the following sections may be begun within 5 years after the day, or the last day, the offence is committed:
- section 147 (Compulsory insurance—employers)

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- section 156 (Information for insurers on application for issue or renewal of policies)
 - section 157 (Information for insurers after renewal of policies)
 - section 158 (Information for insurers after end or cancellation of policies)
 - section 159 (Information for new insurers after change of insurers)
 - section 160 (Six-monthly information for insurers)
 - section 214 (Criminal liability of executive officers).
- (1A) Subsection (1) only applies to an offence against section 214 if the offence relates to the contravention by a corporation of another section mentioned in subsection (1).

30 Section 212

renumber subsections when Act next renumbered under Legislation Act

31 Dictionary, new definition of lump sum claim

insert

lump sum claim means a claim for compensation under this Act in relation to a loss to which part 4.4 (Compensation for permanent injuries) or 4.6 (Compensation for death) applies.

32 Dictionary, definition of recognised auditor, paragraph (c)

substitute

(c) a member of CPA Australia;

Schedule 1 Cross-border amendments

[1.1] Section 30 (4) (a)

substitute

(a) part 4.2A (Employment connection with ACT or State);

[1.2] Section 33

omit

[1.3] New part 4.2A

insert

Part 4.2A Employment connection with ACT or State

36A Meaning of *Territory or State of connection* etc

(1) In this Act:

Territory or State of connection, in relation to the employment of a worker, means—

- (a) the Territory or State with which the employment of the worker is connected, as determined under this part; and
- (b) if this Act mentions the *Territory or State of connection* determined under the law of a State for that employment—the State of connection for that employment, or the Territory or State of connection for that employment, within the meaning of the law of the State.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

(2) In this part:

employer, in relation to a Territory or State, includes an employer within the meaning of the workers compensation law of the Territory or State.

employment, in relation to a Territory or State, includes employment within the meaning of the workers compensation law of the Territory or State.

worker, in relation to a Territory or State, includes a worker within the meaning of the workers compensation law of the Territory or State.

36B Employment connection test

- (1) Compensation under this Act is only payable if the ACT is the Territory or State of connection.
- (2) The fact that a worker is outside the ACT when injured does not prevent compensation being payable under this Act if the ACT is the Territory or State of connection.
- (3) A worker's employment is connected with—
 - (a) the Territory or State where the worker usually works in the employment; or
 - (b) if no Territory or State, or no single Territory or State, is identified by paragraph (a)—the Territory or State where the worker is usually based for the purposes of the employment; or
 - (c) if no Territory or State, or no single Territory or State, is identified by paragraph (a) or (b)—the Territory or State where the employer's principal place of business in Australia is located.
- (4) For a worker working on a ship, if no Territory or State, or no single Territory or State, is identified by subsection (3), the worker's employment is, while working on the ship, connected with—
 - (a) the Territory or State where the ship is registered; or
 - (b) if the ship is registered in more than 1 Territory or State—the Territory or State where the ship most recently became registered.
- (5) If no Territory or State is identified for a worker by subsection (3) or (4), the worker's employment is connected with the ACT if—

- (a) the worker is in the ACT when injured; and
 - (b) the worker is not entitled to compensation in relation to the injury under the workers compensation law of an external Territory, or a place outside Australia.
- (6) In deciding whether a worker usually works in a Territory or State—
- (a) regard must be had to the following:
 - (i) the worker's work history with the employer over the preceding 12 months;
 - (ii) the worker's proposed future working arrangements;
 - (iii) the intentions of the worker and employer;
 - (iv) any period during which the worker worked in a Territory or State (a *relevant place*) or was in a relevant place for the purposes of employment, whether or not the worker is regarded as working or employed in the relevant place under the workers compensation law of the relevant place; but
 - (b) regard must not be had to any temporary arrangement under which the worker works in a Territory or State for a period of not longer than 6 months.
- (7) Compensation under this Act is not payable in relation to the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* (Cwlth) applies to the worker's employment.
- (8) In this section:
- ship* means any kind of vessel used in navigation by water, however propelled or moved, and includes all of the following if used wholly or primarily in navigation by water:
- (a) a barge, lighter or other floating vessel;
 - (b) an air-cushioned vehicle, or other similar craft.

Territory or State, in a geographical sense, includes a Territory's or State's relevant adjacent area as described in schedule 2.

36C Determination of Territory or State of connection in workers compensation proceedings

- (1) If the question of whether the ACT is the Territory or State of connection arises in a proceeding in a court in relation to a claim for compensation under this Act, the court must determine the Territory or State of connection in accordance with section 36B (Employment connection test).
- (2) Subsection (1) does not apply if there is a determination of the Territory or State of connection that is to be recognised under section 36E (Recognition of previous determinations of Territory or State of connection).

36D Determination of Territory or State of connection by Magistrates Court

- (1) If a claim for compensation under this Act has been made, a party to the claim may apply to the Magistrates Court for a determination of the question of which Territory or State is the Territory or State of connection.
- (2) The Magistrates Court must determine the Territory or State of connection in accordance with section 36B (Employment connection test).
- (3) However, an application may not be made or heard if there is a determination of the Territory or State of connection that is to be recognised under section 36E.

36E Recognition of previous determinations of Territory or State of connection

- (1) This section applies if a determination of the Territory or State of connection has been made by any of the following courts or tribunals:

- (a) an ACT court under section 36C or 36D;
- (b) a court or tribunal of a State under a provision of a law of the State corresponding to section 36C or 36D;
- (c) an ACT court or a court of a State in a proceeding on a damages claim to which part 9.2 (Choice of law) applies, or to which provisions of a law of a State corresponding to part 9.2 apply.

Note **State** includes the Northern Territory (see Legislation Act, dict, pt 1).

- (2) The Territory or State determined as mentioned in subsection (1) is to be recognised for this Act as the Territory or State of connection.
- (3) This section does not prevent any appeal relating to a determination of a court.
- (4) If a determination is changed on appeal to a court, the changed determination is to be recognised under this section.

36F No ACT compensation if external compensation received

- (1) Compensation under this Act (***ACT compensation***) is not payable in relation to a worker's injury to the extent that compensation (***external compensation***) under the workers compensation law of an external Territory or a place outside Australia has been received in relation to the same injury.
- (2) If a person receives ACT compensation from an employer in relation to a worker's injury and later receives external compensation in relation to the same injury, the employer is entitled to recover from the person the recoverable amount.
- (3) For subsection (2), the lesser of the following amounts is the recoverable amount:
 - (a) the amount of ACT compensation;
 - (b) the amount of external compensation.

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- (4) If an amount of ACT compensation is paid in relation to a lump sum claim, subsection (3) (a) applies as if the reference to the *amount of ACT compensation* paid by the employer included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.
- (5) An employer cannot recover an amount under this section in relation to an injury if the employer has recovered an amount under section 184 (No compensation if damages received) in relation to the same injury.

[1.4] Section 144 (2)

omit

section 147 (2)

substitute

section 147 (7)

[1.5] Section 147

substitute

147 Compulsory insurance—employers

- (1) An employer commits an offence if the employer fails to maintain a compulsory insurance policy with an approved insurer.

Maximum penalty: 250 penalty units, imprisonment for 2 years or both.

Note One or more fault elements apply to this offence (see Criminal Code, s 22).

- (2) Subsection (1) does not apply to a non-business employer.
- (3) An employer commits an offence if the employer fails to maintain a compulsory insurance policy with an approved insurer.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
 - (5) This section does not apply to an employer if—
 - (a) the employer is a self-insurer; or
 - (b) the employer and another employer or other employers could become liable to pay compensation for the same worker, and any of the other employers maintains a joint compulsory insurance policy for the joint liability of all the employers.
 - (6) It is a defence to a prosecution for an offence against this section in relation to an employer's liability in relation to a worker if the employer proves that at the time of the offence—
 - (a) the employer believed on reasonable grounds that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State); and
 - (b) the employer had insurance, or was registered, as required under the law of the State in relation to liability for workers compensation under the law of the State.
- Note* **State** includes the Northern Territory (see Legislation Act, dict, pt 1).
- (7) 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.

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[1.6] Section 150

omit

If an employer

substitute

- (1) If an employer

[1.7] New section 150 (2)

insert

- (2) However, the employer is not liable under subsection (1) for a failure to maintain a compulsory insurance policy in relation to a worker if—
- (a) the employer believed on reasonable grounds that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State); and
 - (b) the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers compensation under the law of the State.

Note **State** includes the Northern Territory (see Legislation Act, dict, pt 1).

[1.8] Chapter 9 heading

substitute

Chapter 9 Common law damages

Part 9.1 Interpretation and application

[1.9] New part 9.2 etc

after section 182, insert

Part 9.2 Choice of law

182A Definitions for pt 9.2

- (1) In this part:

damages claim—see section 182C.

employer, in relation to a Territory or State, includes an employer within the meaning of the workers compensation law of the Territory or State.

substantive law—see section 182B.

worker, in relation to a Territory or State, includes a worker within the meaning of the workers compensation law of the Territory or State.

- (2) For this part, a *work-related injury* is an injury to a worker for which compensation is payable (whether or not it has been paid) under the workers compensation law of a Territory or State.
- (3) Also, a *work-related injury* includes an injury to a worker for which compensation under a workers compensation law of a Territory or State—
- (a) would have been payable apart from a provision of the law that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker stated in the provision; or
 - (b) would have been payable if a claim for the compensation had been properly made, and (if applicable) an election to claim compensation (instead of damages) had been properly made.

182B Meaning of *substantive law*

- (1) For this part, *substantive law* includes each of the following, whether or not it would otherwise be regarded as procedural in nature:

Endnotes

- (a) a law that establishes, modifies or extinguishes a cause of action or a defence to a cause of action;
- (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or shortening of that time);
- (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not begun within a stated time;
- (d) a law that limits the kinds of injury, loss or damage for which damages or workers compensation may be recovered;
- (e) a law that prevents the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered;
- (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights;
- (g) a provision of this chapter, and any other provision of this Act for the interpretation of this chapter;
- (h) a provision of the law of another Territory or a State about damages for work-related injuries that is prescribed for this section under the regulations.

Note **State** includes the Northern Territory (see Legislation Act, dict, pt 1).

- (2) However, **substantive law** does not include a law prescribing rules for choice of law.

182C Meaning of *damages claim*

- (1) For this part, **damages claim** means a claim for damages in relation to a work-related injury to a worker caused, or claimed to have been caused by—
 - (a) the negligence or other tort of the employer or a person for whose acts the employer is vicariously liable; or

- (b) a breach of contract by the employer.
- (2) Also, *damages claim* includes a claim for damages in relation to an injury caused, or claimed to have been caused, by negligence or another tort even if the damages are claimed in an action for breach of contract or other action.

182D Applicable substantive law for damages claims

The substantive law of the Territory or State of connection governs—

- (a) whether or not a damages claim can be made in relation to a work-related injury to a worker; and
- (b) if a damages claim can be made—the determination of the damages claim.

182E Claims to which pt 9.2 applies

This part applies only to a damages claim against 1 or more of the following people:

- (a) the employer;
- (b) a person who is vicariously liable for the acts of the employer;
- (c) a person for whose acts the employer is vicariously liable.

Part 9.3 Compensation and common law damages

[1.10] Chapter 16 heading

substitute

Chapter 16 Transitional—Workers Compensation Amendment Act 2001

[1.11] New chapter 17

insert

Chapter 17 Transitional—Workers Compensation Amendment Act 2003 (No 2)

247 Definitions for ch 17

In this chapter:

cross-border scheme commencement day means the day the cross-border scheme provisions are inserted or substituted by the *Workers Compensation Amendment Act 2003 (No 2)*.

cross-border scheme provisions means the following provisions of this Act:

- part 4.2A (Employment connection with ACT or State)
- part 9.2 (Choice of law)
- schedule 2 (Adjacent areas).

248 Application of cross-border scheme provisions

- (1) The cross-border scheme provisions do not apply in relation to an injury (an *earlier injury*) received before the cross-border scheme commencement day.
- (2) This Act applies in relation to the earlier injury as if the cross-border provisions had not been inserted by the *Workers Compensation Amendment Act 2003 (No 2)*.

- (3) If the death of a worker results from both an earlier injury and an injury (a *later injury*) received on or after the cross-border scheme commencement day, the worker is, for the application of the provisions in relation to the death of the worker, to be treated as having died as a result of the later injury.
 - (4) If a period of incapacity for work resulted both from an earlier and a later injury, the incapacity is, for the application of the cross-border scheme provisions in relation to the incapacity, to be treated as having resulted from the later injury.
 - (5) The cross-border scheme provisions, and this section, do not affect the following:
 - (a) the liability of an employer or an insurer in relation to an earlier injury, including a liability to make a contribution under section 27 (Compensation for death or incapacity through disease) in relation to compensation payable for a later injury;
 - (b) the apportionment of liability under this Act if there are 1 or more earlier injuries and 1 or more later injuries.
- 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, s 104).
- (6) A compulsory insurance policy in force on the cross-border scheme commencement day covers the employer, for as long as the policy remains in force, for the employer's liability under this Act as affected by the cross-border scheme provisions.

249 Expiry of ch 17

- (1) This chapter expires 2 years after the day it commences.
- (2) This chapter is a law to which the Legislation Act, section 88 (Repeal does not end the effect of transitional laws etc) applies.

[1.12] New schedule 2*insert***Schedule 2 Adjacent areas**(see s 36B (8), def *Territory or State*)**1 Definitions for sch 2**

In this schedule:

continental shelf—see the Seas and Submerged Lands Act, section 3 (1).

Petroleum (Submerged Lands) Act means the *Petroleum (Submerged Lands) Act 1967* (Cwlth).

Seas and Submerged Lands Act means the *Seas and Submerged Lands Act 1973* (Cwlth).

territorial sea—see the Seas and Submerged Lands Act, section 3 (1).

2 Adjacent areas for States and the Northern Territory

- (1) The *adjacent area* for New South Wales, Victoria, South Australia or Tasmania is—
 - (a) the part of the area described in the Petroleum (Submerged Lands) Act, schedule 2 for the State that is within the outer limits of the continental shelf; and
 - (b) the space above and below that area.
- (2) The *adjacent area* for Queensland is—
 - (a) the part of the area described in the Petroleum (Submerged Lands) Act, schedule 2 for Queensland that is within the outer limits of the continental shelf; and

-
- (b) the Coral Sea area within the meaning of the Petroleum (Submerged Lands) Act, section 5A (7), other than the territorial area within the Coral Sea area; and
- (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 9 February 1983 under the Seas and Submerged Lands Act, section 7; and
- (d) the space above and below the areas described in paragraphs (a), (b) and (c).
- (3) The *adjacent area* for Western Australia is the part of the area described in the Petroleum (Submerged Lands) Act, schedule 2 for Western Australia that—
- (a) is within the outer limits of the continental shelf, including the space above and below the area; and
- (b) is not within Area A of the Zone of Cooperation.
- (4) The *adjacent area* for the Northern Territory is—
- (a) the part of the area described in the Petroleum (Submerged Lands) Act, schedule 2 for the Northern Territory that—
- (i) is within the outer limits of the continental shelf; and
- (ii) is not within Area A of the Zone of Cooperation; and
- (b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of the Petroleum Submerged Lands Act, section 5A (3)) other than the territorial sea within that area; and
- (c) the space above and below the areas described in paragraph (a) and (b).
- (5) However, the *adjacent area* for a State or the Northern Territory does not include any area inside the limits of a State or Territory.

[1.13] Dictionary, new definitions

insert

damages, for chapter 9 (Common law damages)—see section 180.

damages claim, for part 9.2 (Choice of law)—see section 182C.

[1.14] Dictionary, definition of *employer*, paragraph (b)

substitute

(b) for part 4.2A (Employment connection with ACT or State)—see section 36A (2) (Meaning of *Territory or State of connection* etc); and

(c) for chapter 5 (Injury management process)—see section 87 (Meaning of *employer* and *insurer* if more than 1); and

(d) for part 9.2 (Choice of law)—see section 182A (1).

[1.15] Dictionary, new definition

insert

employment, for part 4.2A (Employment connection with ACT or State)—see section 36A (2) (Meaning of *Territory or State of connection* etc).

[1.16] Dictionary, definition of *injury*, new note

insert

Note For an extended meaning of *injury* for ch 9 (Common law damages), see s 180.

[1.17] Dictionary, definition of Territory worker

substitute

substantive law, for part 9.2 (Choice of law)—see section 182B.

Territory or State of connection—see section 36A.

Territory worker means a worker for whom the ACT is the Territory or State of connection.

[1.18] Dictionary, definition of worker

substitute

worker—

- (a) see chapter 3 (Meaning of worker); and
- (b) for part 4.2A (Employment connection with ACT or State)—see section 36A (2) (Meaning of *Territory or State of connection* etc); and
- (c) for part 9.2 (Choice of law)—see section 182A (1).

workers compensation law means a law of a place that sets up a statutory scheme for the compensation of injuries arising out of or in the course of employment.

work-related injury, for part 9.2 (Choice of law)—see section 182A (2) and (3).

Schedule 2 Criminal Code harmonisation

Part 2.1 Workers Compensation Act 1951

[2.1] New section 3A

insert

3A Offences against Act—application of Criminal Code etc

- (1) The Criminal Code applies to offences against this Act.
- (2) Other legislation applies in relation to offences against this Act.
- (3) Subsection (1), this subsection and note 3 expire on 31 December 2005.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

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

Note 3 Default application date of Code

The Criminal Code will apply to all ACT legislation from 1 January 2006, making subsection (1) redundant from that date (see the Criminal Code, pt 2.1).

[2.2] Section 90

substitute

90 Insurer's obligation of prompt payment

- (1) An insurer commits an offence if—
 - (a) the insurer is required under this Act to pay an amount for a service; and
 - (b) the insurer does not pay the amount to the person who provided the service (the *service provider*) within 30 days after the day the service is provided.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply if—
 - (a) the insurer does not pay for the service because the insurer has reasonable grounds to believe that the service has not been provided, or has not been properly provided; and
 - (b) the insurer has told the service provider, in writing, why the insurer has not paid for the service.
- (3) An offence against this section is a strict liability offence.

[2.3] Section 91

omit

An employer (other than a non-business employer)

substitute

- (1) An employer

[2.4] New section 91 (2) and (3)

insert

- (2) This section does not apply to a non-business employer.
- (3) An offence against this section is a strict liability offence.

[2.5] Section 92 (4)

omit

, without lawful authority or excuse,

[2.6] New section 92 (7) and (8)

insert

- (7) An offence against this section is a strict liability offence.
- (8) This section does not prevent the alteration of the register to correct an error of fact.

[2.7] New section 100 (4)

insert

- (4) An offence against this section is a strict liability offence.

[2.8] Section 105 (1) to (3)

substitute

- (1) This section applies if—
 - (a) a full-time, part-time or casual worker has been totally or partially incapacitated for work because of an injury; and
 - (b) 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; and
 - (c) within 6 months after the day the worker became entitled to weekly compensation, the worker asks the employer liable to pay the compensation to provide employment for the worker.
- (2) The employer must provide employment to the worker that is—
 - (a) so far as reasonably practical, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury; and

(b) otherwise suitable employment for the worker.

Maximum penalty: 10 penalty units.

(3) An offence against this section is a strict liability offence.

[2.9] Section 106 (1) to (3)

substitute

(1) This section applies if—

(a) a contract worker has been totally or partially incapacitated for work because of an injury; and

(b) 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; and

(c) within the defined period, the worker asks the employer liable to pay the compensation to provide employment for the worker.

(2) The employer must provide employment to the worker that is—

(a) so far as reasonably practical, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury; and

(b) otherwise suitable employment for the worker.

Maximum penalty: 10 penalty units.

(3) An offence against this section is a strict liability offence.

[2.10] New section 106 (5)

insert

(5) In this section:

contract period includes the period of any reasonably expected extension or renewal of the contract.

defined period, for a contract worker who is entitled to weekly compensation, means the period beginning on the day the worker becomes entitled to weekly compensation and ending—

- (a) if the contract period ends, or would end, before the end of 6 months after the day the worker becomes entitled to weekly compensation—at the end of the contract period; or
- (b) in any other case—6 months after the day the worker becomes entitled to weekly compensation.

[2.11] Section 109

substitute

109 Workplace rehabilitation

- (1) An employer must establish and maintain a return-to-work program that complies with subsection (3).

Maximum penalty: 10 penalty units.

- (2) An employer must display or notify a return-to-work program that complies with subsection (3) at each place of work of the workers to whom the program relates or may relate.

Maximum penalty: 10 penalty units.

- (3) A return-to-work program must—
 - (a) provide policies and procedures for the rehabilitation (including, if necessary, vocational rehabilitation) of injured workers of the employer; and
 - (b) be consistent with the injury management program of the employer's insurer; and
 - (c) be established in accordance with any guidelines issued by the Minister under section 110; and
 - (d) be developed in consultation with—

- (i) the workers to whom it relates, or may relate; and
 - (ii) any industrial union of workers representing the workers; and
 - (iii) an approved rehabilitation provider.
- (4) Subsection (1) does not apply if—
- (a) the employer is part of a group of employers that has jointly established a single return-to-work program for each member of the group; and
 - (c) the employers are authorised in writing to do this by the Minister; and
 - (b) the return-to-work program complies with subsection (3).
- (5) This section does not apply to a non-business employer.
- (6) An offence against this section is a strict liability offence.

[2.12] Section 114 (4)

substitute

- (4) The insurer must not contravene a direction under this section.
Maximum penalty: 10 penalty units.
- (5) An offence against this section is a strict liability offence.

[2.13] Section 126 (1) and (2)

substitute

- (1) If an employer receives a claim for compensation or another document in relation to a claim, the employer must, within 7 days after the day the employer receives the claim or document, forward it to the insurer liable to indemnify the employer for the claim (the *liable insurer*).

Endnotes

8 Uncommenced amendments

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 the day the employer receives the request—
- (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.

[2.14] Section 126 (5)

substitute

- (5) An offence against this section is a strict liability offence.

[2.15] Section 139 (1)

omit

chapter

substitute

Act

[2.16] New section 142 (5)

insert

- (5) An offence against this section is a strict liability offence.

[2.17] Section 148

omit

[2.18] Section 153 (3)

substitute

- (3) Subsection (1) does not apply in relation to 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.
- (4) An offence against this section is a strict liability offence.

[2.19] Section 154

substitute

154 Cancellation

- (1) An approved insurer must not cancel a compulsory insurance policy otherwise than in accordance with a protocol about cancellation.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

[2.20] New section 155 (1A)

insert

- (1A) An offence against this section is a strict liability offence.

[2.21] Section 155

renumber subsections when Act next republished under Legislation Act

[2.22] Section 163 (1) (c)

substitute

- (c) if an approved insurer or a self-insurer is a corporation—an executive officer of the corporation.

[2.23] Section 163 (3)

substitute

Endnotes

8 Uncommenced amendments

- (3) The notice must set out details of the applicable offences and penalties for the offences.

[2.24] Section 163 (5)

omit

an offence against subsection (6)

substitute

an applicable offence.

[2.25] Section 163 (6)

substitute

- (6) A person to whom a notice is given must comply with the notice.
Maximum penalty: 50 penalty units.
- (7) An offence against this section is a strict liability offence.
- (8) In this section:
applicable offence means—
- (a) an offence against this section; or
 - (b) an offence against section 213 (False information etc) in relation to a notice.

[2.26] New section 169 (8A)

insert

- (8A) An offence against this section is a strict liability offence.

[2.27] Section 169

renumber subsections when Act next republished under Legislation Act

[2.28] Section 170 (3)

substitute

- (3) The alleged employer must not make an agreement or admission in relation to the claim.

Maximum penalty: 20 penalty units.

- (3A) Subsection (3) does not apply to an admission or agreement if the nominal insurer consents to the admission or agreement.

- (3B) An offence against this section is a strict liability offence.

[2.29] Section 170

renumber subsections when Act next republished under Legislation Act

[2.30] Section 174 (2), penalty

substitute

Maximum penalty: 50 penalty units.

[2.31] New section 174 (3)

insert

- (3) An offence against this section is a strict liability offence.

[2.32] Section 176

omit

An insurer

substitute

- (1) An insurer

[2.33] New section 176 (2)

insert

Endnotes

8 Uncommenced amendments

- (2) An offence against this section is a strict liability offence.

[2.34] New section 178 (5)

insert

- (5) An offence against this section is a strict liability offence.

[2.35] Section 189 (2), penalty

substitute

Maximum penalty: 1 penalty unit.

[2.36] New section 189 (3)

insert

- (3) An offence against this section is a strict liability offence.

[2.37] Section 190 (3) and (4)

substitute

- (3) An employer must comply with a notice given to the employer under subsection (1) or (2).

Maximum penalty: 50 penalty units.

Note Under s 213 (False information etc), it is an offence for an auditor to supply false, misleading or incomplete information in an auditor's certificate.

- (4) An offence against this section is a strict liability offence.

[2.38] Section 191 (5)

substitute

- (5) A person must not contravene a requirement under this section.

Maximum penalty: 50 penalty units.

- (5A) An offence against this section is a strict liability offence.

[2.39] Section 191

renumber subsections when Act next republished under Legislation Act

[2.40] Section 194

substitute

194 Obstruction or hindrance of inspector

A person must not obstruct or hinder an inspector in the exercise of the inspector's functions under this Act.

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

[2.41] Section 210

substitute

210 Confidentiality

- (1) If a person acquires information or a document under this Act, the person must not—
 - (a) make a record of the information or document; or
 - (b) give anyone else the information or document, or divulge or communicate the information or anything contained in the document in any other way.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply to conduct if the conduct is carried out for this Act or as required by law.
- (3) An offence against this section is a strict liability offence.

[2.42] Sections 213, 214 and 215

substitute

213 False information etc

- (1) This section applies to each of the following statements (a *relevant statement*):
 - (a) a statement in a notice under this Act;
 - (b) a statement by a recognised auditor in a certificate given for this Act;
 - (c) a statement in a claim for compensation;
 - (d) a statement in a medical certificate or other document that relates to a claim for compensation;
 - (e) a statement giving information to someone about a claim for compensation (whether the information is given by the person who made the claim or not).
- (2) This section applies to a relevant statement even if it has been verified by a statutory declaration.
- (3) However, this section does not apply to the following statements:
 - (a) a statement made in a document filed, or information given, in a court proceeding;
 - (b) a statement 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.
- (4) A person commits an offence if—
 - (a) the person makes a relevant statement; and
 - (b) the person does so knowing that the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (5) A person commits an offence if—
- (a) the person makes a relevant statement; and
 - (b) the person is reckless about whether the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading.

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

- (6) Subsections (4) (b) (i) and (5) (b) (i) do not apply if the statement is not false or misleading in a material particular.
- (7) Subsections (4) (b) (ii) and (5) (b) (ii) do not apply if the omission does not make the statement misleading in a material particular.

214 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation contravenes a defined provision of this Act; and
- Note* Subsection (6) lists the *defined provisions* to which this paragraph applies.
- (b) the contravention constitutes an offence against this Act (a *relevant offence*); and
 - (c) the officer was reckless about whether the contravention would happen; and
 - (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
 - (e) the officer failed to take all reasonable steps to prevent the contravention.

Endnotes

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
 - (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
 - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the defined provision;
 - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
 - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the defined provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.
- (6) In this section:

defined provision, of this Act, means any of the following provisions of this Act:

 - (a) section 92 (3) (Register of injuries);
 - (b) section 126 (Action by employer in relation to claims);

- (c) section 142 (1) (Vocational rehabilitation);
- (d) section 147 (Compulsory insurance—employers);
- (e) section 153 (Compulsory insurance—insurers);
- (f) section 156 (Information for insurers on application for issue or renewal of policies);
- (g) section 157 (Information for insurers after renewal of policies);
- (h) section 158 (2) (Information for insurers after end or cancellation of policies);
- (i) section 159 (Information for new insurers after change of insurers);
- (j) section 160 (1) (Six-monthly information for insurers);
- (k) section 161 (Statutory declarations—false information etc);
- (l) section 162 (3) (Employment after 2nd offence);
- (m) section 163 (6) (Provision of information to Minister);
- (n) section 176 (1) (Premiums—maximum rates);
- (o) section 190 (3) (Provision of information to inspectors);
- (p) section 191 (5) (Entry and inspection of premises);
- (q) section 194 (1) (Obstruction or hindrance of inspector);
- (r) section 210 (Confidentiality);
- (s) section 213 (False information etc).

[2.43] Dictionary, definition of *approved rehabilitation provider*

substitute

approved rehabilitation provider—see section 139 (1).

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